(1)

Supreme Court, U.S.
FILED

011038 DEC 13 2001

OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
a/k/a Debra L. Lynch & Debra Franchi, Deceased

Dean Lynch,
Petitioner

Patricia Flaherty, Linda A. Kacewicz,
and Michael P. Franchi,
Respondents

On Petition for Writ of Certiorari
To The New York Court of Appeals

PETITION FOR WRIT OF CERIORARI

Dean Lynch, pro se
Petitioner
101 Greenbush Road
Tappan, NY 10983
845-359-7161

62 pp

INTRODUCTORY STATEMENT

Decedent died married and a domiciliary of the State of New York. Petitioner, surviving spouse of Decedent, filed a Petition for Administration in Rockland County, New York, alleging there was no valid will. Respondents, Decedent's siblings, filed a Petition for Probate of a 1995 will in Middlesex County, Massachusetts. The Commonwealth of Massachusetts entered a default probate decree based upon the petition which misrepresented that the deceased was "Divorced". The Rockland Surrogate, who had abated the divorce action, granted said default probate decree full faith and credit dismissing without a hearing Petitioner's claim that the Commonwealth of Massachusetts lacked jurisdiction. Jurisdiction is the cornerstone of due process and no court has addressed that issue and/or afforded an opportunity to be heard on same, full, fair or otherwise.

All men and women are entitled to their day in Court. Petitioner asserts that this basic right has been denied in the State of New York.

QUESTIONS PRESENTED FOR REVIEW

I. Before full faith and credit is granted to a judgment in the courts of other states does constitutional due process require an inquiry into jurisdiction?

II. Does constitutional due process of law include known fraud being entitled to full faith and credit?

III. Does constitutional due process allow the dismissal of an action based upon evidence not properly before the tribunal and not subject to confrontation?

IV. Without jurisdiction, does notice satisfy the constitutional due process requirement for a full and fair opportunity to be heard?

V. Does equal protection under the law require a court to protect the interests of an unrepresented infant?

VI. Does the denial of appellate review without opinion evidence an arbitrary and capricious denial of due process?

VII. How can equal protection and due process under the law be insured in the 21st Century?

PARTIES TO THE PETITION

DEAN LYNCH, Petitioner
Husband of DEBRA LYNCH, Deceased

PATRICIA FLAHERTY, LINDA A. KACEWICZ,
AND MICHAEL P. FRANCHI,
Respondents
Siblings of DEBRA LYNCH, Deceased

The Respondents are represented by:

BIRBROWER, MONTALBANO,
CONDON & FRANK, P.C.
67 North Main Street
New City, New York 10956
(845) 634-7010
and
BLANK ROME TENER GREENBLATT LLP
405 Lexington Avenue
New York, New York 10174
(212) 885-5000
Co-Counsel New York

HILL & BARLOW, P.C.
One International Place
Boston, MA 02110
(617) 428-3000
and
LOURIE & CUTLER, P.C.
60 State Street
Boston, MA 02109
(617) 742-6720
Co-Counsel Massachusetts

TABLE OF CONTENTS

PAGE

INTRODUCTORY STATEMENT i

QUESTIONS PRESENTED FOR REVIEW ii

PARTIES TO THE PETITION iii
TABLE OF CONTENTS iv
TABLE OF AUTHORITIES v

PETITION 1

OPINION BELOW 2
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

HOW THE FEDERAL QUESTIONS WERE
RAISED AND ADDRESSED BELOW 10

REASONS FOR GRANTING THE WRIT 11
I. 11
II. 13
III. 15
IV 16
V 20
VI 22
VI 24

CONCLUSION 26

APPENDIX INDEX 29

TABLE OF AUTHORITIES

PAGE

CHANDLER V. FRETAG, 348 U.S.3 4
THOMPSON V. WHITMAN, 85 U.S. 457 7,11,13
COLE V. CUNNINGHAN, 133 U.S. 107 7
SIMMONS V. SAUL, 138 U.S. 439 7
TILT V. KELSEY, 207 U.S. 43 7
CHRISTMAS V. RUSSELL, 5 Wallace 290 8
WILLIAMS V. STATE OF NORTH CAROLINA, 324 U.S. 226 11
GRANNIS V. ORDEAN, 234 U.S. 385 11
ARMSTRONG V. MANZO, 380 U.S. 545 11
DURFEE V. DUKE, 375 U.S. 106 12,16
IN RE BURWELL, 350 U.S. 521 14
BALDWIN V. IOWA STATE TRAVELING MEN'S ASSN., 283 U.S. 522 17,18,19
CHICOT COUNTY DRAINAGE V BAXTER STATE BANK, 308 U.S. 37 18
DRED SCOTT V. SANDFORD, 19 How. 393 23
IN RE AMENDMENT TO RULE 39, 500 U.S. 13 24
BOGUSLAVSKY V. KAPLAN, 159 F.3d 715 (2nd Cir.) 26

No.

In the
Supreme Court of the United States

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
a/k/a Debra L. Lynch & Debra Franchi, Deceased

Dean Lynch,
Petitioner

Patricia Flaherty, Linda A. Kacewicz,
and Michael P. Franchi,
Respondents

On Petition for Writ of Certiorari
To The New York Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Dean Lynch, pro se
101 Greenbush Road
Tappan, NY 10983
845-359-7161

OPINION BELOW

MATTER OF LYNCH, 279 A.D. 2d 578 (2001)
MATTER OF LYNCH, 719 N.Y.S. 2d 605 (2001)

JURISDICTION

Appeal taken by Dean Lynch, Petitioner, as to the Decision and Order of the Rockland County, New York Surrogate, Alfred J. Weiner , dated September 8, 1999. Appendix D
Said Decision and Order was appealed resulting in the unanimous affirmation by the Appellate Division, Second Department decision No. 4159B entered January 22, 2001. Appendix C
Said decision of January 22, 2001 was the subject of a Motion for Reargument or Leave to Appeal to the Court of Appeals of the State of New York and was denied without opinion on March 15, 2001. Appendix B
Petitioner filed a Notice of Motion for Leave to Appeal and Sua Sponte Examination of Merits to the Court of Appeals of the State of New York, which was denied without opinion on September 20, 2001. Appendix A

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1257, as well as the United States Supreme Court's Constitution supervisory function over the states and to insure "Equal Justice Under the Law."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. ARTICLE IV. Section 1. : Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

U.S. CONST. AMEND. V: No person shall...be deprived of life, liberty, or property, without due process of law;...

U.S. Const. Amend. XIV: No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

NEW YORK CIVIL PRAC. L&R (CPLR)
Sec. 5401: ...a judgment, decree, or order of a court of the United States or other court is entitled to full faith and credit in this state, except one obtained by default in appearance or confession of judgment....

STATEMENT OF THE CASE

Petitioner, a citizen of the State of New York, is the Widower of the Decedent, and father of her only child. His in-laws, the Respondents, obtained a death certificate in Massachusetts, which stated Decedent was "Divorced". Utilizing this death certificate, the Respondents filed a Petition in Probate in Massachusetts representing there was no surviving spouse in order to probate a 1995 Will. Petitioner, pro se, filed a special appearance contesting the jurisdiction of the Massachusetts Court.

The Massachusetts Court entered a Probate Decree by default without a hearing and/or addressing the paramount issue of subject matter jurisdiction.

The New York Surrogate, who had abated a divorce action initiated by the Respondents, granted the Massachusetts default probate decree full faith and credit and dismissed without a hearing and/or addressing subject matter jurisdiction an earlier Petition for Administration filed by Petitioner. Said Petition was first in time and right and had joined the issue of jurisdiction. The Respondents manipulated the Courts in New York and improperly presented the Massachusetts default Probate Decree after the matter had been submitted for decision. Although Petitioner's attorney had previously requested a hearing on jurisdiction, he was never given an opportunity to reply to that untimely and improper submission. Clearly the denial of Petitioner's day in court violated his rights to due process and is contrary to holdings of this Honorable Court.

> If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.CHANDLER V. FRETAG, 348 U.S. 3 (1954)

The application of full faith and credit by the New York Courts to the Massachusetts' default probate decree has denied Petitioner all of his rights, including standing, as surviving spouse of Decedent.

Prior to her death on September 5, 1996, Decedent had executed three wills: December 1993, January 1994 and June 1995.

On November 6, 1998, Petitioner filed a Petition for Administration Proceedings in Rockland County, New York, alleging that Decedent died without a valid will as a result of her lack of capacity caused by her brain cancer in 1992. (See Appendix I: As per DANA FARBER CANCER INST. on 12-1-93 decedent lacked understanding of the concepts of "coma or death." Petitioner was required to sign medical authorization.)

On November 19, 1996, Surrogate Weiner dismissed the Petition for the failure to attach the alleged invalid will of 1995.

Petitioner filed an Amended Petition on November 23, 1996 with the 1995 and 1993 wills attached.

On November 24, 1998, Respondents filed for probate of the 1995 will in Middlesex County, Massachusetts. In their Petition they represented that Decedent had died without a surviving spouse and as a resident of Weston, Massachusetts. (See Appendix E) Petitioner was served as the guardian of the infant child and filed a special appearance in Massachusetts objecting to subject matter jurisdiction.

Respondents filed an appearance in the Rockland County proceeding and made a motion to dismiss for lack of jurisdiction.

Petitioner's attorney responded to the motion, which was returnable April 23, 1999 and requested a hearing on the issue of jurisdiction. On April 26, 1999, the matter was submitted to the Rockland County Surrogate.

On June 15, 1999, the Middlesex County Probate Court entered a default probate decree, accepting the alleged 1995 will which was based upon the misrepresentation of Richard Renehan, Esq. of Hill & Barlow, PC that Petitioner was the "ex-husband" and Decedent had been living in Massachusetts for "two years after the divorce." (See Appendix F; Note: In October, 1999, Mr. Renehan admitted to the court these statements were untrue, but the Massachusetts Court refused to vacate the decree.)

On July 27, 1999, Respondents' New York attorney forwarded to the Rockland County Surrogate and Petitioner's attorneys, Ezra & Howe, the June 15, 1999 default probate decree from the Middlesex County Probate Court.* The Petition for Probate containing the misrepresentation that there was no surviving spouse was part of the decree and the Memorandum of Decision set forth not only that the decree was by default, but that the "issue of domicile" had not been raised, let alone addressed and decided. (See Appendix E @ Memorandum and Appendix G)

On September 8, 1999, Alfred J. Weiner, the Rockland County Surrogate, deferred to the Massachusetts Court, granted the default probate decree full faith and credit; and dismissed the proceeding. (Appendix D) This action was taken without a hearing and/or any opportunity given to Petitioner's attorney to address the improper submission of

---

* Appeal period in Massachusetts is 30 days from entry, Petitioner's attorneys received notice of the June 15, 1999 default probate decree on July 30, 1999.

the Massachusetts decree and jurisdiction. The failure to have a hearing to address the threshold issue of subject matter jurisdiction and the court's reliance upon an improper and untimely filing as dispositive was a fundamental denial of due process of law.

As a direct result of the New York dismissal and Massachusetts' failure to recognize Petitioner as the surviving spouse, Petitioner has been denied all of his rights, in violation of the Fifth and Fourteenth Amendment. An Appeal was taken, by Petitioner, pro se, to the New York Supreme Court Appellate Division-Second Department. Petitioner asserted that the failure of the Surrogate to conduct a hearing as to the issue of domicile violated his constitutional rights to due process, which demands "a full and fair opportunity to litigate the issue."

> It is the settled doctrine of this court that the constitutional provision that full faith and credit shall be given in each state to judicial proceedings of the other states, does not preclude inquiry into jurisdiction of the court in which the judgment is rendered over the subject-matter or parties affected by it, nor into the facts necessary to give such jurisdiction. Thompson v. Whitman 85 U.S. 457 Wall 457 (1873); Cole v. Cunninghan 133 U.S. 107 (1890)
>
> Simmoms v. Saul ,138 U.S. 439 (1891)

This Court has found that when "full faith and credit is demanded for a judgment in the courts of other states, an inquiry into jurisdiction is always permitted". Tilt v. Kelsey, 207 U.S. 43 (1907) Petitioner asserts "an inquiry into jurisdiction" is required to insure due process under the law.

Petitioner's position is that the Commonwealth of Massachusetts lacked subject matter jurisdiction, making its actions ultra virus and rendering its decree null and void.

> Where a court has jurisdiction, it has right to decide every question, which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But, if it acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.
>
> Christmas v. Russell, 5 Wallace 290

In the Appeal before the Second Department, Petitioner set forth the facts concerning a divorce action the Respondents had commenced in 1995 after taking Decedent to Massachusetts for a two week vacation and detaining her there. The undisputed facts showed that Surrogate Weiner, acting as a Supreme Court Justice, had been directly involved with a failed proposed stipulation of settlement in New York and that he had abated the divorce action. Surrogate Weiner had personal knowledge of the facts and circumstances, which gave rise to Petitioner's attack upon the jurisdictional issue based on domicile and competency.

The Appellate Division-Second Department found; "the Surrogate's Court providently exercised its discretion by giving full faith and credit to the Massachusetts probate decree" and the Court "need not reach the petitioner's remaining contentions." (Appendix C) Those contentions included jurisdiction, denial of due process and the failure of the Surrogate to protect the interests of Decedent's child. The Second Department failed to address the procedural denial of due process as to full faith and credit being given to

a default decree in violation of New York CPLR 5401, and the substantive denial of due process as to full faith and credit being given to a default decree without a finding of jurisdiction by either court. Moreover, the Second department failed to address the entitlement of full faith and credit to a decree, which was based upon a known misrepresentation of a material fact, denied Petitioner any standing or status in the Massachusetts action as surviving spouse.

The Second Department's failure to address the "remaining contentions" violated not only Petitioner's rights under the 5th and 14th Amendments, but those of Decedent's child who has been deprived any benefit or any accounting in the five years since her mother's death. Not only has there been no accounting as to the estate, but none as to the numerous trusts in which the child is vested which have an estimate value in excess of $100 million. (See Appendix H, wherein Respondents' attorney advised the New York court that there is "no absolute assurances" there will "be assets on hand" for the decedent's child in light of the fact the trusts state "the principal may be sprayed disproportionately among the beneficiaries". The Respondents are trustees as well as beneficiaries of several of the trusts. See Appendix L: When the Commonwealth of Massachusetts was presented with proof of "No Divorce" from NY, MA & NJ, the Office of Vital Statistics refused to amend the death certificate. As a result the title to Petitioner's home is unmarketable and he can not access the equity therein forcing him to cash in a life insurance policy to tend to the needs of the child and himself.)

HOW THE FEDERAL QUESTIONS WERE RAISED AND ADDRESSED BELOW

The Constitutional guarantee of due process of law was raised to the Appellate Division, Second Department in the Notice of Appeal filed by Petitioner on September 27, 1999 and was raised in the "Question Presented" as to the denial of Petitioner's attorney's request for a hearing. The Appellate Division, Second Department failed to address the question of due process of law directly, but its opinion implies it is within a court's discretion to disregard it. Appendix C

The issue of due process and all the others were raised to the Court of Appeals by Notice of Motion for Leave to Appeal and Sua Sponte Examination of Merits. However, it was not addressed. The Motion was denied without opinion or comment except: "due deliberation having been thereupon had,..".Appendix A

REASONS FOR GRANTING THE WRIT

I. Before full faith and credit is granted to a judgment in the courts of other states does constitutional due process require an inquiry into jurisdiction?

> In any other State it would be regarded like any foreign judgment; and as to a foreign judgment it perfectly well settled that the inquiry is always open whether the court by which it was rendered had jurisdiction of the person or the thing. "Upon principle," says Chief Justice Marshall, "it would seem that the operation of every judgment must depend on the power of the court to render that judgment; or, in other words, on its jurisdiction over the subject-matter which it has determined."
>
> Thompson v. Whitman, 85 U.S. 457 (1873)

It is undisputed that "domicile is the foundation of probate jurisdiction". Williams v. State of North Carolina, 325 U.S. 226 (1945) The domicile/jurisdiction issue was raised, by Petitioner, in both New York and Massachusetts. Although a jurisdictional hearing was requested in writing by Petitioner in each of the states none was granted.

> A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean,, 234 U.S. 385, 394. It is the opportunity which must be granted at a meaningful time and in a meaningful manner.
>
> Armstrong v. Manzo, 380 U.S. 545 (1965)

Respondents made a motion to the New York Surrogate returnable April 23, 1999 to intervene and to dismiss the proceeding. In response, Petitioner requested that there be an

immediate hearing on the issue of domicile of decedent. The New York Surrogate never conducted an inquiry.

On June 15, 1999 the Massachusetts Court entered the default probate decree after disregarding all Petitioner's written requests as well as Respondents' oral suggestion that a hearing be had to dispose of "his challenge to jurisdiction". (See Appendix F)

There is no dispute that the Massachusetts probate decree is by default and that none of the issues, particularly jurisdiction, were "fully litigated or judicially determined". The Massachusetts default probate decree was not entitled to be afforded the "res judicata effect" to bar the issues being "retried in another State in litigation between the same parties". Durfee v. Duke, 375 U.S. 106 (1963) Therefore, the Massachusetts probate decree was not entitled to full faith and credit in New York.

Moreover, New York "had the power and, upon proper averments, the duty to inquire into the jurisdiction of the" Massachusetts court "to render the decree". Durfee v. Duke. Supra. The New York Surrogate disregarded this "duty to inquire into jurisdiction"; and granted full faith and credit to the Massachusetts default probate decree dismissing the New York proceedings. As a result, Petitioner was denied his rights without due process of law under the Federal Constitution. Petitioner asserts that settled case law requires an inquiry into jurisdiction as a condition precedent to the application of full faith and credit.

> ....Congress giving full faith, credit, and effect to judgments of each State in every other State do not refer to judgments rendered by a court having no jurisdiction...if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void.
>
> Thompson v. Whitman, 85 U.S. 457 (1873)

Petitioner acknowledges that domicile is dispositive of subject matter jurisdiction. Personal jurisdiction was never addressed in Massachusetts or its effect on the granting of full faith and credit in New York. Although raised to the Appellate Courts of the State of New York that issue was not addressed. Petitioner respectfully adopts the reasoning of the cases of this Honorable Court cited above as to that issue and its bar to the granting of full faith and credit without inquiry.

II. Does constitutional due process of law include known fraud being entitled to full faith and credit?

In America, we rely on due process of law to insure justice. There is no justice without truth. The truth is that Petitioner is the surviving spouse of decedent. Respondents misrepresented that decedent was "Divorced" in obtaining the death certificate. The Massachusetts default probate decree was fraudulently obtained utilizing this death certificate and a petition, which state there was no surviving spouse. This fraud was committed after the Respondents and their attorneys were fully aware that Surrogate Weiner, acting as a Supreme Court Justice, had abated the divorce action. Surrogate Weiner had been directly involved in the attempt to dispose of the divorce action by a proposed stipulation of settlement. In light of decedent's illness, the parties had attempted to settle the divorce by insuring that decedent's daughter would be economically secure and independent. Surrogate Weiner had overseen the negotiations and acknowledged decedent's circumstances and was fully aware of her limitations. Unfortunately, decedent died before the proposed stipulation could be completed; and as a result of decedent's death its intent and implementation became impossible. As a result Surrogate Weiner abated the divorce action. Therefore, when Surrogate Weiner was presented

with the Massachusetts default probate decree, which had the petition as a part thereof, he knew fraud had been committed upon the Massachusetts Court because no surviving spouse was included as an heir at law. The filings properly before Surrogate Weiner requesting the motion to intervene and to dismiss, as well as the request for a hearing on domicile/jurisdiction, include evidence concerning these and other misrepresentations.

Surrogate Weiner was presented with a default probate decree of decedent who died without a surviving spouse and he was requested to entitle it to full faith and credit. Surrogate Weiner knew decedent had a surviving spouse who was before him requesting an inquiry into jurisdiction/domicile. Surrogate Weiner dismissed the New York proceedings based upon the Massachusetts default probate decree of the 1995 will. The Second Department stated that, "the Surrogate's Court providently exercised its discretion by giving full faith and credit to the Massachusetts probate decree". (Appendix C)

Petitioner asserts that this abuse of discretion which included known fraud being entitled to full faith and credit violated his rights to due process and equal protection under the 5th and 14th Amendments of the United States Constitution.

> As long as that court keeps within the bounds of judicial discretion, its actions are not reviewable.
>
> In Re Burwell, 350 U.S. 521 (1956)

Under the facts presented to the Second Department and Court of Appeals "the bounds of judicial discretion" in New York include not only disregarding the law, but the truth. Surrogate Wiener knew CPLR 5401 was clear as to a foreign default decree. Surrogate Weiner knew Petitioner was the surviving spouse, and he had personal acknowledge that supported Petitioner's contentions as to domicile, as well as

the allegations as to the validity of the 1995 will, as well as the wills of 1993 and 1994.

III. Does constitutional due process allow the dismissal of an action based upon evidence not properly before the tribunal and not subject to confrontation?

The New York Surrogate had before him in April 1999 Respondents' motion to intervene and dismiss the proceeding and Petitioner's request for a hearing on domicile.
The Massachusetts Court entered its default probate decree on June 15, 1999, which was forwarded to the New York Surrogate on July 27, 1999.
The New York Surrogate dismissed the proceeding without any hearing or giving Petitioner's counsel any opportunity to be heard as to the Massachusetts' default probate decree. It is clear the New York Surrogate acted upon and relied on the Massachusetts decree which did not even exist at the time the motion and request for hearing was submitted; and that decree was not properly before the court. If in his judicial discretion, the New York Surrogate felt it relevant and proper to honor the default decree, due process demanded that notice to Petitioner's attorney be given of his intent to reopen the matter. The failure to reopen denied Petitioner the right of confrontation as to this untimely and improper filing. The Court's reliance on that filing denied Petitioner his day in court. The Surrogate's reliance on this untimely filing to dismiss the proceeding is so far from the bounds of normal judicial practice as to constitute an abuse. The Surrogate had evidence before him to make a decision without the default probate decree. If he had done so it would have changed the issues on appeal. However, the Surrogate's actions, and the manner in which the Appellate Courts of New York have failed to address the important issues involved warrants review by this Honorable Court. This matter is important

because the concept that a trial court can act with such disregard of basic legal principles, (confrontation, rules of evidence, etc.) and the Appellate Courts affirm it, raises the issue that due process is at risk.

IV. Without jurisdiction does notice satisfy the constitutional due process requirement for a full and fair opportunity to be heard?

The Surrogate made no factual finding as to the notice give to Petitioner from Massachusetts. The only evidence as to notice before the Second Department was Petitioner's letter of June 10, 1999 questioning and objecting to the Massachusetts Pre-Trial Notice & Order. (Appendix G)
The Second Department concluded that, "The petitioner received proper notice of the proceeding before the Probate Court of the Commonwealth of Massachusetts concerning the decedent's estate." (Appendix C)
This conclusion demonstrates the court failed to grasp that jurisdiction and findings on the merits are required to apply full faith and credit, not notice and default as applied herein. Under full faith and credit, once the issue of "subject matter jurisdiction had been fully litigated in the original forum, the issue could not be retried in a subsequent action between the parties. Durfee v. Duke, 375 U.S. 106 (1963)

> The defendant had elected not to appear at all. If, in the absence of appearance, the court had proceeded to judgment, and the present suit had been brought thereon respondent could raise and tried out the issue in the present action, because it would never have had its day in court with respect to jurisdiction.

Baldwin v. Iowa State Traveling Men's Assn., 283 U.S. 522

Petitioner on appeal attempted to address the issue of notice and the Catch-22 it presented on June 15, 1999 by including in his brief the following Argument:

> The Middlesex Probate Court did not reply to any of the numerous other letters and documents sent to the that Court as to the issue of jurisdiction starting September 13, 1996, days after Debra's death, and continuing thru the Spring of 1999. (R-142)
>
> Having had no response your Petitioner telephoned the Middlesex Probate Court prior to the return date for the Request for Pre-Trial Conference (R-138) made by Hill & Barlow. Said Request made no mention of the jurisdiction issue. Petitioner's call was to inquire if the Court was acting on his objections.
>
> Your Petitioner was advised that nothing had or would be considered as to that issue until he appeared in court to make such objections. Massachusetts entered an order on June 3, 1999 requiring your New York Petitioner to appear on June 15, 1999, or face the consequences.(R-338) On June 10, 1999, your Petitioner (decedent's husband), who was not and is not recognized in the Massachusetts Petition as Debra's surviving spouse (R-339), wrote to the Middlesex Probate Court to repeated his position. See Exhibit "A" (Appendix G hereof)

At this point of his brief, Petitioner reproduced the following excerpt from one of his first year law school study guides:

> b. JUDGMENT: If the trial court lacked jurisdiction, but erroneously failed to dismiss the action, any judgment rendered by it can obviously be appealed on this ground. However once the judgment becomes final (i.e., defendant fails to appeal within time allowed by law; or the judgment is erroneously affirmed on appeal notwithstanding lack of jurisdiction), whether the

defendant can thereafter raise the jurisdictional defect will depend on whether he actually appeared in the proceedings

(1) Where D has appeared in the proceedings and the judgment has become final, it cannot thereafter be attacked by D, even on jurisdictional grounds. It is conclusive where rendered, and if a state court judgment, in every other state. And, this is true whether or not any issue of jurisdiction was actually litigated in the proceedings...the judgment is conclusive on all points which were actually litigated or which could have been litigated in the action. (Chicot County Drainage v. Baxter State Bank, 308 U.S. 371)

(a) Rationale: This is an application of the res judicata effect of bar (infra, p. 192)
(b) The above rule applies even where D appeared only specially to attach the jurisdiction of the court. If he loses on his motion to quash (or other special appearance), he must thereupon defend the action or suffer a default judgment against himself.
Having raised the jurisdictional issue and lost, if the judgment becomes final, he is barred from ever raising it again later. (Baldwin v. Traveling Men's Assn., 283 U.S 522)

(2) Where D did not appear in the proceedings (default taken against him), D can always raise the jurisdictional objection even though the judgment has become final. He is allowed to "collaterally attack" the judgment—either by bringing an independent action to have it set aside, or by defending any action or proceedings by the plaintiff in attempting to enforce the judgment. In such a case, the court's lack of jurisdiction is a recognized defense to the

enforcement of the judgment; and the judgment is not entitled to "full faith and credit".

(See Conflict of Laws Summary) -pages 31 & 32-
CIVIL_PROCEDURE, by William A. Rutter
Gilbert Law Summaries: 4th Ed. 1972 Gardena, CA.

> On June 15, 1999, your Petitioner, facing this dilemma, remained at home and placed his daughter on the school bus and his faith in the due process of law and the integrity of Surrogate Weiner and the New York Courts.

Adding to Petitioner's legal dilemma was he knew the reality he could not afford to bring his doctors, neighbors and friends of decedent to a hearing in Massachusetts. Under the circumstances ,Petitioner knew that he could never properly or fully litigate the issues in Massachusetts. Therefore, it would be impossible to have a full and fair opportunity to be heard in Massachusetts. At that time, Petitioner's expectation that the Courts of New York would protect him and his daughter seemed reasonable under the circumstances. Now, Petitioner places his daughter's fate and his faith in this most Honorable of Court.

V. Does equal protection under the law require a court to protect the interests of an unrepresented infant?

At the center of this controversy is a fourteen year old child who is the daughter of Decedent and Petitioner.
A child whose mother contracted cancer when she was 14 months old and by the time the child was seven the cancer had effected her mother's brain to that point her father would ask her to watch her mother while he parked the car. (See Appendix I)
A child whose mother told her she was going on vacation, and thereafter continually said she would be coming home, but never did.
A child whose father agreed with a judge and a court appointed guardian ad litem that her interests would be best served by his entering into a proposed stipulation to settle the divorce actions and gain for the child economic security and independence from Respondents.
Unfortunately, Decedent died making the proposed stipulation to settle moot, because economic independence was impossible. The child's legacy, if her mother's domicile was other than New York would be under the control of Respondents. (See Appendix H)
Petitioner's Petition for Administration in New York, as well as his Special Appearance and Objections filed in Massachusetts, requested that a guardian be appointed for the property of the minor child. Included in the record before the Surrogate in this matter were the following facts and allegations:
a) the guardian ad litem reports in the divorce action in April 1996 stated it was in the child's best interest to sever her economic relationship with Respondents; and the second in February 1998 stated that the $1 million was too much of a discount of her interests in trusts. In light of her mother's death, the child was vested with assets, which had a minimum value of $4.2 million as of 12-31-96.

b) Respondents' allegations that Petitioner is "dishonest" and has a "conflict of interest" with his daughter.
c) Respondents' known misrepresentation on the death certificate.
d) Respondents reporting to the Massachusetts Probate Court in March 1999 the estate value of $930,000.
e) Petitioner's representation that he would assign all of his economic rights in Decedent's estate to his daughter, only retaining his status and rights as surviving spouse to utilize the 1994 New York Surviving Spouse Amendment to gain the economic security and independence for his daughter. (See Appendix J) Petitioner intended to attack the trusts, which control his daughter's assets. The Respondents are also beneficiaries as well as trustee of many of the trusts with discretion to spray the principle disproportionately. To themselves. The Respondent's attorneys had stated there may not be any principal when the child was entitled to distribution. (See Appendix H)
f) Respondents in the 3 years since decedent's death had made absolutely no distributions from said trusts or made any inquiry as to the needs, economic or emotional, of their niece, Decedent's daughter.
g) the undisputed fact that Decedent loved her daughter.
Petitioner has been and continues to be the sole support of the child. Petitioner cared for the ill Decedent from 1988 until December 1994, exhausting himself emotionally and financially until decedent went with Respondents for a vacation. The divorce action was commenced in January 1995 by the Respondents on the behalf of the Decedent. Respondents have made an ethics complaint in the State of New Jersey seeking Petitioner's disbarment alleging Petitioner engaged in a "fraudulent scheme" by failing to proffer the revoked 1994 will.
The facts and circumstances known by and presented to the Surrogate dictated the appointment of a guardian of the property for the Decedent's child. The most disturbing of

those facts and circumstances set forth above being Respondents' failure to explain the missing $3.3 million since Decedent's death in 1996.
In this context Joel Ezra, Esq., representing Petitioner at the time, in response to Respondents' motion to dismiss the New York proceeding and requesting an immediate hearing averred:

> To permit the dismissal of this petition, as sought by the Massachusetts petitioners, Patricia Flaherty, Linda A. Kacewicz and Michael P. Franchi to gain a tactical advantage to the detriment of the minor child of the deceased, could do nothing less than raise a public outcry that this Court has failed to protect the helpless child of Debra Lynch and thrown her to the wolves of misfortune from Massachusetts.

There has been no outcry in New York, where the Appellate Courts stated that, "we need not reach the petitioner's remaining contentions." (See Appendix C)

VI. Does the denial of appellate review without opinion evidence an arbitrary and capricious denial of due process?

The New York Court of Appeals, a state court of last resort has so far departed from the accepted and usual course of judicial proceedings as to make a mockery of the rule of law. This departure requires this Honorable Court's exercise of its supervisory power. The departure which the NY Court of Appeals sanctioned without opinion was the finding of the lower courts in New York that a Massachusetts default decree based upon known fraud was entitled to full faith and credit in the New York Courts. Moreover, the Court of Appeals failed, as did the Second Department, to render any opinion as the Petitioner's disturbing and fundamental

contentions. This case presents issues of importance beyond the particular facts and parties involved in that it demonstrates the failure of due process and equal protection under the law in today's society. This is a matter which involves two states (NY & Mass.) and six major law firms manipulating the Courts against a pro se litigant who happens to be a New Jersey attorney and member of your bar. This manipulation of the judicial process has allowed this litigant to be deprived of his rights without any court conducting a hearing and with absolutely no determination of jurisdiction in accord with the due process of law. This case highlights the failure and hypocrisy of "liberty and justice for all" in our Courts. How can known fraud be entitled to full faith and credit?

Due process demands an opinion to explain this apparent oxymoron.

How can this travesty be protected under the guise of due process of law? It was over a century ago in Dred Scott v. Sandford 19 How. 393 (1857), that this Honorable Court found a Negro not a citizen, and his owner given the protection of due process of law. A great man said then that this country could not long endure half free and half slave. Today I challenge this Honorable Court to recognize that this country can not long endure where there is one law for the rich who are represented by powerful and influential law firms and another for the ordinary citizens who are forced to proceed pro se because their cause is "not economically or politically attractive". This case demonstrates that in today's society with the lack of ethics of the legal profession and the apathy of the Courts any desired result can be obtained regardless of the truth of the matter. The merits of this particular matter are less important than the underlying issues which allowed the courts of New York and Massachusetts to act upon a known misrepresentation to deny your petitioner his day in court; where trial judges are weighed down by personal and political considerations. Where it appears appeal courts don't have the time or inclination to read the filings and

thereby sanction such variations from established and elemental principles of due process of law. Where the filings are not read and the courts relies on misrepresentations of respected attorneys. Where the courts are made aware of falsehoods, and after "due deliberations" do nothing about it. (Appendix A)

VII. How can equal protection and due process under the law be insured in the 21st Century?

> This Court once had a great tradition:
> "All men and women are entitled to their day in Court."
> That guarantee has now been conditioned on monetary worth. It now will read: "All men and women are entitled to their day in Court only if they have the means and the money."
>
> In Re Amendment to Rule 39, 500 U.S. 13 (1991)
> Honorable Thurgood Marshall, dissenting.

This matter illustrates that in the civil courts today there is no "Equal Justice Under the Law". The facts and circumstances demonstrate that justice is no longer blind to hear and weigh the truth of a matter. Justice now proceeds with eyes wide open to the real world where each individual and his/her Actions are considered in the context of modern society and all its prejudices.

Your Petitioner, a licensed New Jersey attorney for over 25 years and a member of your bar, is appearing pro se. This circumstance has not been by choice, but the economic and political reality of America today. Although it has clearly worked to Petitioner's disadvantage, these circumstances raise the key question of public importance for the 21st Century: "Is there Equal Justice Under the Law?"

Your Petitioner is not a member of any traditional minority. However, his views and values place him within the minority of Americans who truly believe in this great country's core values and ethics. In law school students are taught that lawyers and judges are officers of the court with the prime directive to pursue justice. As tools and guideposts there are judicial and professional codes of ethics. The reality in the American legal system is that the pursuit of justice has been forgotten.

The concept of "Equal Justice under the Law" sounds wonderful, but is it true?

How can it be true when there are separate classifications for litigants such as pro se and in forma pauperis? Petitioner is pro se in this matter, but has been an attorney for over 25 years, which is the only reason this case has gone this far. Petitioner knows for a fact that the pro se litigant is a recognized second class citizen procedurally as well as substantively. "...you know the old saying 'a person who represents himself has a fool for an attorney' I suggest..." In this matter, Petitioner has heard those same words directed to himself many times over the last six years. This prejudice is that a pro se litigant does not belong in court or his/her cause has no merit. The surreal manner in which the Courts of the state of New York have dealt with the elementary and substantial legal issues in this matter evidences this prejudice is real. In this matter, and as Petitioner believes is the situation in many other cases, this prejudice is substantive.

Petitioner has often said to friends and colleagues that he fears that in the courts today it is "liberty and justice for all that can afford it."

This Honorable Court can utilize its voice to remind all Americans, particularly the officers of the court, of their right, duty and obligation to "Equal Justice under the Law."

CONCLUSION

This Petition has two objectives. The first is to have this Honorable Court order a hearing in the State of New York on the merits. No Court, New York or Massachusetts, has to date conducted a fact finding hearing, taken testimony or made any factual findings as to the domicile of Decedent at the time of her death which is the controlling issue. Due process demands "a full and fair opportunity to litigate the issue". Boguslavsky V. Kaplan, 159 F.3d 715 (2nd Cir. 1998) The issue of subject matter jurisdiction will hinge on the factual finding of whether or not Decedent was mentally competent in December 1994, the ultimate issue being whether or not Decedent did formed or could form the requisite intent to change her domicile. The Decedent's death Certificate states she suffered from "Non Hodgkin's Lymphoma With Brain Metastases" and "Leukoencephalopathy With Dementia" for "Years". Decedent died 9-5-96, and "Years" (being at least two) indicates prima facie evidence that she lacked the requisite mental capacity as of September 1994 when there is no question New York was her residence and domicile. (See Appendix K: Death Certificate)

It is ironic that September 1, 1994 is the effective date of the change in the Surviving Spouse Law in the State of New York which set in motion the last seven years of litigation. That New York law made it necessary for Respondents to arrange to it that Decedent died either "Divorced" or not a New York domiciliary. (See Appendix J and Appendix L)

Five years after his wife's death, Petitioner, the surviving spouse, has been deprived of all his rights without any hearing or factual findings as to domicile, but according to the Courts of the State of New York with "due process of law".

The second objective is for this Honorable Court to insure that in the 21st Century that there is "Equal Justice Under the Law" It is hoped that this Honorable Court will recognize thru this case that the state courts have fallen victim to the

inherent problem of administrating 18th Century ideals of due process in the 21st Century. The guarantee of a day in court is at the very core of constitutional due process. The overriding intent of our system is to allow our citizens to come before a judge and/or his peers and tell their story. This system worked in Abraham Lincoln's day when he would follow the circuit court and hear a client's story over a beer one night and the next day present the case. Clients spend years and thousands of dollars on lawyers to avoid going to court. The court systems have developed rules intended to protect procedural due process, such as motion practice and discovery, which are intended to uncover the truth. However, these procedures are misused in order to hide the truth. Litigation is now economic warfare, which is too often resolved by attrition. Dean John Sexton of NYU Law School speaks of the need for attorneys to be philosopher priests in our society where the law is the American moral compass. Dean Sexton talks of the need for lawyers to seek justice, but he recognizes that the call often goes unanswered. His position appears to echo that the law is the handmaiden of economic power and supports the status quo.

Your Petitioner sees himself as a poor philosopher priest who has given up everything, including his career, in his failed attempt to save his wife from cancer; his daughter from greed and himself from losing his religion:

> ....when the truth is found to be lies
> and the hope within you dies...

The ultimate test for the American Experiment in the 21st Century and which Petitioner presents to this Honorable Court: Equal Justice under the Law.

It is requested that this Honorable Court grant the Writ and set the matter down for argument or, in the alternative remand the matter to the New York trial court for a hearing on subject matter jurisdiction.

If this Honorable Court feels it must deny the Writ, it is Petitioner's most heartfelt plea that your decision explain how and why the probate decree in Massachusetts, which is based on the known misrepresentation that Petitioner's wife was "Divorced", is not the fruit of the poisonous tree.

If it is within the discretion of the Courts in New York to accept known fraud and entitle it to full faith and credit, we the people have a right to know.

God Bless America

Respectfully submitted,

Dean Lynch, pro se
Petitioner

The within Petition is dedicated to IRA HAYES, dec. U.S.M.C.

APPENDIX TABLE OF CONTENTS

PAGE

Order Denying Leave to Appeal Court of Appeals 31
Appendix A

Order of Appellate Division Second Department.....32
Denying Reargument & Leave to Appeal
Appendix B

Appellate Division Second Department Decision.....33
Appendix C

Rockland County, New York Surrogate Decision 35
and Order
Appendix D

Middlesex County, Massachusetts,.....36
Probate Petition/Decree and Memorandum of Decision
Appendix E

Transcript of Middlesex Court June 15, 1999.....39
as to default probate decree
Appendix F

Letter from Petitioner to Middlesex Court 43
June 10, 1999
Appendix G

Letter from Respondents' Counsel.....46
to Rockland Court April 16, 1998
Appendix H

PAGE

Admission Sheet December 1, 1993 of Decedent 49
To DANA FARBER CANCER INSTITUTE
Appendix I

Excerpt from NEW YORK TIMES 51
October 1, 1994
Appendix J

Death Certificate of Decedent 53
Appendix K

Affirmation of Joel Ezra, Esq. 55
April 20, 1999 Appendix L

Note: Appendix D thru Appendix L are taken from New York Record on Appeal, which is 345 pages.

Filed 9-20-2001
STATE OF NEW YORK,
COURT OF APPEALS At a session of the Court,
held at Court of Appeals
Hall in the City of Albany
on the twentieth day of
September 2001

PRESENT, Hon. Judith S. Kaye, Chief Judge, presiding.
2-10 Mo. No. 832
In the Matter of Debra Lynch,
&c., deceased.

Dean Lynch,
Appellant;

Patricia Flaherty, et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is ORDERED, that the said motion be and the same hereby is denied.

s/_____
Stuart M. Cohen
Clerk of the Court

APPENDIX A

Filed 3-13-2001
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT
5952G C/mm
CORNELIUS J. O'BRIEN, J.P.
ANITA R. FLORIO
LEO F. McGINITY
DANIEL F. LUCIANO, JJ.

1999-09132
DECISION &
ORDER ON MOTION
In the Matter of Debra Lynch, etc., deceased.
Dean Lynch, appellant;
Patricia Flaherty, et al., respondents.

Motion by the appellant, inter alia, for reargument of an appeal from order of the Surrogate's Court, Rockland County, dated September 8, 1999, which was determined by decision and order of this court dated January 22, 2001, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this court.

Cross motion by the respondents to impose costs and sanctions upon the appellant.

Upon the papers filed in support of the motion and cross motion and papers filed in opposition thereto, it is

ORDERED that the motion and the cross motion are denied.

O'BRIEN, J.P. FLORIO, McGINITY and LUCIANO, JJ., concur.

ENTER: James Edward Pelzer, Clerk
March 15, 2001

APPENDIX B

Filed 1-22-2001
SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT
ENTERED January 22, 2001 4159B
U/jv

_____AD2d_____ Argued-November 17, 1999

CORNELIUS J. O'BRIEN, J.P.
ANITA R. FLORIO
LEO F. McGINITY
DANIEL F. LUCIANO, JJ.

1999-09132

DECISION & ORDER

In the Matter of Debra Lynch, etc., deceased.
Dean Lynch, appellant;
Patricia Flaherty, et al., respondents.

Dean Lynch. Tappan. N.Y., appellant pro se
Birbrower, Montalbano, Condon & Frank. P.C., New City. N.Y. (Andrea Birnbaum Herbst of counsel), for respondents.

In a proceeding to obtain letters of administration for the Estate of Debra Lynch, the petitioner appeals, as limited by his brief, from so much of an order of the Surrogate's Court, Rockland County (Weiner, S.), dated September 8, 1999, as granted that branch of the objectants' motion which was, in effect, to dismiss the petition for lack of jurisdiction.

ORDERED that the order is affirmed insofar as appealed from. with costs payable by the appellant personally.

The petitioner received proper notice of the proceeding

APPENDIX C

before the Probate Court of the Commonwealth of Massachusetts concerning the decedent's estate. Furthermore, the decedent's1995 will was admitted to probate in Massachusetts. Therefore, the Surrogate's Court providently exercised its discretion by giving full faith and credit to the Massachusetts probate decree and in granting that branch of the motion which was to dismiss the petition for lack of jurisdiction (see Matter of Brown,
120 Misc 2d 799, 804; Matter of Emmons, 93 Misc 2d 615; see generally, Matter of Acheson, 28 NY2d 155, 162. cert denied 404 US 826).

In light of our determination, we need not reach the petitioner's remaining contentions.

O'BRIEN, J.P. FLORIO, McGINITY and LUCIANO, JJ., concur.

ENTER: James Edward Pelzer, Clerk
January 22, 2001

APPENDIX C

Filed 9-8-1999
SURROGATE'S COURT OF THE STATE OF NEW YORK
ENTERED 9-8-1999

----------X

ADMINISTRATION PROCEEDING
DECISION and ORDER
Estate of DEBRA LYNCHa/k/a Debra L. Lynch & Debra Franchi, Deceased.
File No. 98600

----------X

Alfred J. Weiner, Surrogate:

In this administration proceeding, a motion has been made by the temporary executors of decedent's estate who were appointed pursuant to a decree of the Middlesex County Probate Court, State of Massachusetts on January 21, 1999, for leave to intervene and to dismiss this proceeding. The application is opposed by petitioner.

Decedent's last will was admitted to probate and the temporary executors were appointed executors of her estate pursuant to a decree dated June 15, 1999. Accordingly, the motion for leave to intervene is granted and this proceeding for letters of administration is dismissed for lack of jurisdiction since the last will has been admitted to probate and executors have been duly appointed. In re Szalkiewicz's Will, 199 Misc 262.

This decision constitutes the order of the court.

Dated: New City, New York s_____
September 8, 1999 Surrogate

To: Ezra & Howe, Attys. for Petitioner
Birbrower, Montalbano, Condon & Frank, P.C., Attys. For Intervenors

APPENDIX D

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Middlesex Division Docket 97P3465

Probate of Will Without Sureties

Name of Decedent Debra Lynch a/k/a Debra L. Lynch
Domicile at Death 16 Westcliff Road, Weston, Middlesex, MA 02493
Date of Death September 5, 1996
Name and address of Petitioner(s) Patricia Flaherty 111 Rockland Street, Natick, MA 01760; Linda A. Kacewicz 225 Narragansett Bay Avenue, Warwick, RI 02889; Michael P. Franchi 241 Perkins Street #C-2, Jamacia Plain, MA 02130
Status Siblings/Named Executors Named Temporary Executors

Heirs at law or next of kin of deceased including surviving spouse:

Name Residence Relationship
(minors and incompetents must be so designated)

Madeline S. Lynch 101 Greenbush Road, Tappan, NY 10983 Daughter (minor)

That said decedent left a will------herewith presented, wherein your petitioner(s) is/are named ---- temporary and permanent Executors wherein the testatrix had requested that your petitioner(s) be exempt from giving surety on ---their bond(s).

APPENDIX E

(X) The petitioner(s) herby certify that a copy of this document, along with a copy of the decedent's death certificate has been sent by certified mail to the Division of Medical Assistance, P.O. Box, Essex Station, Boston, Massachusetts 02112.

Wherefore your petitioner(s) pray that said will---may be proved and allowed, and that ---they be appointed temporary and permanent executors thereof---/without surety on --their bond(s) and certify under the penalties of perjury that the statements herein contained are true to the best of his/her/their knowledge and belief.

Dated 10/20/98 Signatures(s) s/ Patricia Flaherty

FILED: November 24, 1999 s/ Linda A. Kacewicz

s/ Michael P. Franchi

The undersigned hereby assent to the foregoing petition and to the allowance of the will without testimony.

DECREE

All persons interested having been notified in accordance with the law or having assented and no objections being made thereto, it is decreed that said instrument(s) be approved and allowed as the last will and testament of said deceased and that the said petitioner(s) Patricia Flaherty of Natick in the County of Middlesex, Linda A. Kacewicz of Warwick in the State of RhodeIsland and Michael P. Franchi of Jamaica Plain in the Countyof Suffolk be appointed execut_thereof, first giving bond with sureties for the due performance of said trust, together with the Memorandum of Decision which is filed and incorporate herewith.

Date June 15, 1999 s/ Beverly Weinger Boorstein

Justice of the Probate and Family Court

Note: Petition & Decree are one document on one sheet of paper, Memorandum of Decision was attached and incorporated by reference.

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION DOCKET NO. 97P3465

IN RE: ESTATE OF DEBRA LYNCH
FILED: JUNE 15, 1999

MEMORANDUM OF DECISION

Respondent, Dean Lynch, the objecting party having failed to appear for pre trial on June 15, 1999; and
Respondent having sent a letter to the Trial Department of this Court dated June 10, 1999 in which he, a lawyer by profession, raises the issue of the jurisdiction of this court when the issue, if any, is not whether or not the court has jurisdiction over Respondent; and
the pre trial notice having specifically state that the case may be ordered to immediate trial on the date of the pre trial if it appears that one party, through a failure to appear at the Pre trial Conference or otherwise will not present a case;
the respondent not having raised the conventional objections, viz the issue of domicile or invalidity of the will due to undue influence, lack of capacity or improper, execution, the court finds that he will not present a case and thus orders that the Will be allowed and executors be appointed.

June 15, 1999 s/_____
Date Beverly Weinger Boorstein
Judge Of the Probate and Family Court

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX COUNTY
CAMBRIDGE PROBATE AND FAMILY COURT
Docket No. 97-3465EP

IN RE: THE ESTATE OF DEBRA LYNCH

Before: Honorable Justice Beverely Weinger Boorstein

Date: June 15, 1999 TRANSCRIPT

Appearances: Attorney Richard Renehan
HILL & BARLOW
1 International Place
Boston, MA 02110
Index Witnesses Direct Cross Redirect Recross

No witnesses presented
Total Transcript Pages: 4
Re: Estate of Debra Lynch page 2
Proceedings

[...] indicates an inaudible or unintelligible portion of the tape.
Note: This is a 2-track tape (and not 4-track)' and therefore not always audible.
APPENDIX F
Note: The judge is inaudible on this tape

The Clerk: [Barely audible] In the matter of Lynch. For this record, this is Docket No.97 Probate 3466. Please approach the bench. Would counsel identify themselves for the record.

APPENDIX F

Mr. Renehan: Good morning, Your Honor. Richard Renehan of Hill and Barlow for the Petitioners. Let me tell you what it's all about in a nutshell, Your Honor. We have filed, in Probate, a will of a Massachusetts decedent. Her ex-husband, living in New York, says, (a) the will is invalid because she wasn't mentally competent, and (b) there's no jurisdiction in Massachusetts because we don't think she was legally a domicile here. She had lived here two years after the divorce.

There is a letter that came in after we filed that saying he will not show up. He has just a special appearance. My suggestion is, if the Court could set down a date when we could hear his challenge to jurisdiction, it would dispose of this thing. What's really going on is, he filed a Petition claiming intestacy in New York City, and he wants the New York Court to act on it before this Court acts, and we want the reverse. We want--

Re: Estate of Debra Lynch page 3

The Court: [Completely inaudible]

Mr. Renehan: Do you mean for his family to [...]? Well, that's an interesting-- I take it.

The Court: [Inaudible]

Mr. Renehan: All I know is what the Cou--

The Court: [Inaudible]

APPENDIX F

Mr. Renehan; Or a trial--

The Court: [Inaudible]

Mr. Renehan: I mean, I'd take [a default], Your Honor, because we're talking about a will that should be probated and---

The Court: [Inaudible]

Mr. Renehan: Let me add one footnote. I-- We signed a certificate that we gave him a copy of that pretrial order. We didn't-- I mean we were going to give it to him today. He didn't show up. We mailed him a copy of your order. But my pretrial memorandum says that we handed it to him today in anticipation of his appearance.

The Court: [Inaudible]

Mr. Renehan: Thank you, very much, Your Honor.
(End of Proceedings

APPENDIX F

Statement
I, Frances DiLeo, do hereby state that the foregoing is a transcript, prepared to the best of my ability, and insofar as was audible, of a barely audible two-track tape provide to us by Attorney Dean Lynch of the hearing in this matter of Estate of Debra Lynch, Docket No. 97-3465 before Justice Beverely Weinger Boorstein in the Cambridge Probate and Family Court on June 15, 1999.
1/19/2000s/_____
Date Frances DiLeo

AAA Court Transcription Specialists
139 Playstead Rd.
Medford, MA 02155
(781) 396-1124

NOTE: CERTIFIED COPY OF TAPE FROM COURT IN POSSESSION OF DEAN LYNCH ON WHICH JUDGE IS PARTLY AUDIBLE ON A STANDARD STEREO TWO TRACT SYSTEM.

APPENDIX F

DEANLYNCH
P.O. BOX 159
ATTORNEY AT LAW
1 KALISA WAY-SUITE 202
PARAMUS, NJ 07653-0159
201-986-1431
FAX: 201-986-0555

6-10-99

Trial Department
Probate and Family Court
208 Cambridge Street
P.O. Box 410480
East Cambridge, Mass. 02141-0005

Re: Estate of Debra Lynch
Docket no. 97P3465
Pretrial 6-15-99

Dear Sirs:
I am in receipt of the "Pre-Trial Notice & Order" dated June 3, 1999 as to the above captioned matter.
With all due respect, same is premature. Clearly said order is a form order as to a contested matrimonial matter and not a contested Estate matter.
In addition, your Honorable court has no jurisdiction over me or my daughter, Madeline. I have made a "special appearance" only which clearly contests the jurisdiction of your Honorable Court over the Estate of Debra Lynch, who died a resident of the state of New York.
Under the principles of conflict of laws, the estate process having been commenced earlier in time in the State of New York must be resolved first in New York. Therefore , full

APPENDIX G

faith and credit demands that your Honorable Court take no action until the New York litigation gas been fully resolved. It is only after the conclusion of the New York Litigation that your Honorable Court may acquire jurisdiction over the subject matter.

I can not appear or participate in any conference due to my "special appearance".

A review of your file will reveal that a substantial number of issues need to be resolved prior to the scheduling of a "Pre-Trial" conference. These include but are not limited to:

1) The appointment of the Petitioner;

2) The continued representation of Petitioners by Hill & Barlow;

3) Issue of conflict of interest relating to my late wife and our daughter
visa--a-vis Hill & Barlow;

4) Issue of missing $3.3 million from Estate assets occurring between
December 31, 1996 and March 8, 1999;

5) Issues of formal accounting by Petitioners with regard to their role as
Trustees and in relation to gifts to themselves and "spraying";

6) The use of the Power of the Court to protect the estate of my late wife
and the interests of our minor daughter.

As this Honorable Court is well aware I am proceeding pro se. This is not out of ego, but economic necessity. I have been unable to find a firm in Massachusetts willing to take on Hill & Barlow and Lourie & Cutler without a substantial retainer.

APPENDIX G

Again, I would respectfully request that this Honorable court take no action until the issues are fully litigated in the State of New York.

Respectfully submitted,
s/
Dean Lynch, pro se

cc: Hill & Barlow
Lourie& Cutler
Honorable Justice Boorstein
Honorable Justice McGovern

APPENDIX G

_ Birbrower, Montalbano, Condon & Frank, P.C.
Attorneys and Counsellors at Law
67 North Main Street
P.O.Box 1070
New City, New York 10956-8070
(914) 634-7010
Fax(914) 634-8993

April 16, 1998

Hon. Alfred J. Weiner, A.J.S.C.
Supreme Court Rockland County
Rockland County Courthouse
Main Street
New City, NY 10956

Re: Lynch v. Lynch
Index No. 1109-95

Dear Judge Weiner:
We carefully read the report of the guardian ad litem and the analysis of his accountant and find that each has serious shortcomings. The guardian ad litem admits that his report was based upon a "limited" review and "without a thorough analysis and complete inspection of the books and records". His accountant's report fails to apply any discount even though his letter to the guardian ad litem of January 31, 1998 states "In valuing a partial interest, a discount is normally applied for lack of marketability, lack of transferability, and such other factors." Further, it appears that there was no analysis or consideration of what the underlying trusts provide.
For example, under the Sea Breeze Trust Madeline receives her one-fifth interest outright as tenant-in-common with the

other beneficiaries twenty (20) years after the death of the survivor of the initial trustees, Mary V. Franchi and Richard V. Saletta. Further, a consensus of at least 55% of the Trust beneficiaries is required in order to mortgage, acquire, sell, or convey any of the Trust real property.

Each of the several Trusts has its own provisions which, like these, have a significant impact on value. The Kinmonth Realty Trust terminates upon the last to occur of the death of Pasquale Franchi (Debra Lynch's father) or June 6, 2015. During the term of that Trust the principal may be sprayed disproportionately among the beneficiaries based upon their respective needs. The Trustees of that Trust are the Franchi children. The Bear Hill Development Trust has the same spraying provisions and continues until the death of Pasquale Franchi. The KCN Realty Trust terminates twenty (20) years after the death of the last to die of four (4) persons unless the beneficiaries agree to an earlier termination. Pasquale Franchi is the sole Trustee of that Trust, The Bear Hill Development Trust and the Depasulumi Trust which terminates on his death unless the Franchi children agree to an earlier termination. With each and every Trust, Madeline must be living at termination to receive a share and there must be assets on hand at that time.

We, respectfully request the Court' permission to hire an independent valuation expert to provide an informed analysis to the Court. We believe that a considered report will truly be invaluable to the Court in the decision making process. All that is presently before the Court is a report that now says $1,000,000 is not enough without specifying what the actual value of the Trust interests amounted to when the stipulation was made. That report admittedly was prepared without a thorough investigation. Clearly, it is in the best interest of Madeline Lynch that an accurate value based upon a complete analysis of the facts be established. I expect that

Mr. Lynch would necessarily agree as, given his opinion of the Franchi Family, he would not wish his daughter to continue her involvement in its financial affairs as a beneficiary of Trusts which they control which Trusts provide her with no absolute assurances.

The expert we would propose is James Lippert, C.P.A. of Eleven Oaks Consulting, LLC. Mr. Lippert is a senior Member of the American Society of Appraisers (ASA) and a retired senior partner of Ernst & Young. I have spoken to Mr. Lippert who indicated his willingness to travel to Massachusetts to review the information necessary to this task. A copy of his firm brochure is enclosed for the Courts consideration.

It should be noted for the Court's file that the guardian ad litem was previously advised that Madeline's interest in The Madeline S. Lynch Revocable Trust dated 6-28-95 could not be renounced as Debra Lynch had a pourover Will with her estate being added to that Trust. Accordingly, contrary to the report of the guardian ad litem this trust should not be considered in the group of Trusts to be renounced.

Very truly yours,
BIRBROWER, MONTALBANO,
CONDON & FRANK, P.C.
s
KEVIN F. HOBBS
cc: Dean Lynch, Esq.
Joseph P. McGlinn, Esq.

NOTE: Emphasis added & as to the issue of "limited review..." "apply any discount" Respondents supplied and controlled information given Mr. McGlinn which did not include copies of the complete " books and records". Respondents set forth Sea Breeze, which owns 134 rental unit in Nahant, MA, value as $1.2 million, real estimated value $10 million to $12 million.

APPENDIX H

DANA-FARBER CANCER INSTITUTE
44 BINNEY STREET
BOSTON, MA 02115
(617) 632-3000

Name of Patient: Debra E. Lynch Number: 13-72-01

December 1, 1993 (continued)
Due to the patient's progressive neurologic deterioration, the patient was initiated on chemotherapy on 11/24/93, receiving CTX 1,000mg/m2 IV Day 1, Decadron 30mg IV Day 1, and VCR 1.4mg/m2 (maximum 2.0mg IV Day 1). She is now admitted for high dose MTX.
The patient tolerated her initial chemotherapy without complications, and has done well in the interim with only difficulty with sleeping.
PAST MEDICAL HISTORY: 1) Tonsillectomy and adenoidectomy. 2) G1P1. 3) Lymphoma, as above.
ALLERGIES: No known drug allergies.
MEDICATIONS: None.
PHYSICAL EXAMINATION: To be performed on admission.
LABORATORY: To be preformed on admission.
IMPRESSION: Ms. Lynch is a 40 y.o. white female, now with relapse with lymphomatous meningitis.
As mentioned previously, her options for therapy are limited in that she has previously received whole brain XRT, as well as having suffered extensive neurological complications due to this treatment. In this light, a palliative attempt at chemotherapy was advised and the patient received Day 1 CTX, VCR, and Decadron, without significant complications. She presents today for Day 8 high dose MTX.

APPENDIX I

The patient's family and the patient, to the extent that she can understand it, is aware that there are significant risks with chemotherapy, particularly high dose MTX, with respect to development of leukoencephalopathy which could be severe, leading to either coma or death. The patient's family and the patient are aware of these dreadful side effects.

In that this is palliative chemotherapy, we have at this point decided to hold on the placement of an Omaya reservoir for intrathecal chemotherapy, and that we will observe her response to high dose MTX which should have adequate penetration into the CNS parenchyma, as well as into the CSF. If however, her response is not adequate, or if she has further deterioration, considerations for our placement of an Omaya reservoir with IT Ara-C would be given
She will be admitted today for high dose MTX. Care with respect to the patient's hydration must be given to assure proper excretion of the MTX. The patient will be admitted and hydrated vigorously, with D5W with 100mEq of HCO3 and 20mEq of KCl
per liter at 125cc's/hour/m2 for 8-12 hours. When the urine ph is greater than 7.0, MTX 3 grams/m2 will be administrated IV over two hours. Hydration will then continue for another 12 hours in an attempt to maintain urine output greater than

---

T#: 1103-0731
ADMISSION SUMMARY- INPATIENT CHART COPY-
PRINTED 12/01/93

NOTE: Emphasis added

APPENDIX I

A NEW YORK LAW GIVES MORE RIGHTS TO SPOUSES

(The New York Times - 10/1/94)

by: Deborah M. Rankin

The final and most controversial element of a 1992 New York law that drastically expands the inheritance rights of spouses took effect last month.

The law prevents someone from tying up substantially all of a surviving spouse's share of an estate in a trust.

Most states have long had some sort of law that enables a surviving spouse, even if disinherited, to claim a minimum share of a deceased spouse's estate outright. In New York, the survivor's share was generally half of the estate if the person had no descendants, or a third if the person had descendants.

Before 1992, New York allowed this rule to be satisfied if the deceased put the assets in a trust instead of leaving the estate assets directly to the surviving spouse.

To bring New York in line with some other states and to protect the rights of survivors - typically women who outlive their mates - legislators approved a gradual change two years ago.

From the beginning of 1992 through August of this year, the law said that if the property of the estate was put into a trust for the benefit of the surviving spouse, the survivor could not challenge the estate as long as he or she got $50,000 outright, up from $10,000 before.

As of Sept. 1, property placed in trust for the benefit of the surviving spouse will no longer do. Now, even if all of the late spouse's assets are placed in trust for the benefit of the survivor, the survivor can elect to take a third of the

estate outright or $50,000, whichever is more. If survivors want the money outright, however, under the new law, they must give up any interest in the trust.

"The point is a trust doesn't work anymore".

The survivor's ability to break the trust throws a wrench in some family business plans.

If the spouse chooses, he or she can break the trust and be come on active owner of the business.

Even though he has yet to see a single case like this, he said, "You can bet that within the next four or five years, a substantial case will come up".

APPENDIX J

The Commonwealth of Massachusetts 399-96
Standard Certificate of Death

DEBRA L LYNCH FEMALE
DOD SEPTEMBER 5, 1996
PLACE OF DEATH : NEWTON, MIDDLESEX, BraeBurn Nursing Home
SS# 013-44-3233
WHITE 4 YEARS COLLEGE
Age 42 DOB Dec. 5, 1953 place Newton, Mass.

marital status DIVORCED last spouse DEAN LYNCH
occupation ARTIST-FREE LANCE

residence 16 WESTCLIFF RD. WESTON, MIDDLESEX, MASS. 02193

parents PASQUALE FRANCHI ITALY MADELINE CORSI MASS.

informant PATRICIA FRANCHI FLAHERTY 111 ROCKLAND ST. NATICK, MASS, SISTER

funeral director ANDREW J. MAGNI license # 5066

place of disposition LINWOOD CEMETERY WESTON, MASS.

date of disposition SEPT. 9, 1996 facility ANDREW J. MAGNI FUNERAL HOME 365 WATERTOWN ST. NEWTON, MASS. 02158

APPENDIX K

cause of death between onset & death

PNEUMONIA DAYS

NON HODGKIN'S LYMPHOMA WITH BRAIN METASTASES YEARS

LEUKOENCEPHALOPATH
WITH DEMENTIA YEARS

autopy ? NO refer to m.e? NO

s/ CYNTHIA P. ZARA, MD 332 WASHINGTON ST. WELLESLEY HILLS, MASS 02181
license # 73186
r n pronouncement? YES
when SEPT. 5, 1996 10:10 pm CATHERINE JOHNSON, RN 159629
date of burial permit issued SEPTEMBER 9, 1996 date of record SEPT. 9, 1996

s/ WILLIAM G. ENGLISH -NEWTON TOWN CLERK

NOTE: Emphasis added

APPENDIX K

SURROGATE COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

X
ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH AFFIRMATION
a/k/a Debra L. Lynch and Debra Franchi
Deceased----------
X
STATE OF NEW YORK)
COUNTY OF NASSAU) s.s.

JOEL S. EZRA, ESQ. , an attorney duly admitted to the practice of law in the Courts of the State of new York, affirms the following under penalties of perjury:

1. I am the attorney for Dean Lynch, the petitioner herein.
2. I make this affirmation to supplement the affidavit made by Dean Lynch in opposition to the application of respondents.
3. Having reviewed the scenario that has unfolded in this matter and the facts herein, it appears that this proceeding encompasses the exact set of circumstances that was envisioned under the change in the law in 1994 relating to surviving spouses. It is this scenario which our legislature intended to correct.
4. Simply stated, under the old law, the surviving spouse, after exhausting all the assets of the marriage, is left at the mercy of the Trustees (the respondents herein), who permitted the exhaustion of all the marital assets by not tendering any funds from the Trusts to Debra Lynch during her lifetime.
5. The intent of any Trust is to benefit its beneficiaries In this case, the trustees withheld aid to Debra Lynch and her spouse during Debra's lifetime.
6. The 1994 Surviving Spouse Law amendment recognized the reality that in-laws will always be in-laws, and will in all ways treat the surviving spouse as an outsider, at best.

APPENDIX L

7. I draw to this Court's attention that at the matrimonial settlement conference, that the Franchis agreed to fund a trust for Madeline with $1,000,000.00. The Franchis failed to fund the Trust. Based upon Mr. McGlinn's determination as to the value of Debbie Lynch's interest in those Trusts, the failure to fund the Trust inured to the benefit of the respondents herein who, as remaindermen of the Trusts, would increase their wealth substantially. It is my understanding that Mr. McGlinn indicated to this Court that Debra's share of the Trusts was somewhere in the vicinity of $4.2 million dollars, and that the Franchis reneged on funding the discounted Trust for Madeline from $4.2 million dollars in value to $1,000,000.00 which was the agreed settlement.

8. If this Honorable Court washes its hands of this matter and sends petitioner and his infant daughter to Massachusetts for their hearing, the likelihood of petitioner being able to bring his witnesses to Massachusetts and to mount a sufficient prosecution, diminishes dramatically.

9. In view of the foregoing, I respectfully urge that this Court exercise its jurisdiction, especially in view of the clear intent of the respondents herein to prohibit the infant, Madeline Lynch, from obtaining that which is due to her.

WHEREFORE, it is respectfully urged that the motion of respondents be denied in all respects, except in permitting respondents to intervene herein, and that the relief sought in the petition of petitioner be granted in all respects.

Affirmed this 20th day of April, 1999 s/_____
JOEL S. EZRA

APPENDIX L

CORRECTED COPY

Supreme Court U.S.
FILED
FEB 15 2002
OFFICE OF THE CLERK

(4)

No. 01-1038

In The

Supreme Court of the United States

October Term, 2001

ADMINISTRATION PROCEEDING ESTATE OF DEBRA LYNCH a/k/a Debra L. Lynch & Debra Franchi, Deceased,

DEAN LYNCH,

Petitioner,

– against –

PATRICIA FLAHERTY, LINDA A. KACEWICZ, AND MICHAEL P. FRANCHI,

Respondents.

On Petition for a Writ of Certiorari to The New York Court of Appeals.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SHEILA GINSBERG RIESEL
BLANK ROME TENZER GREENBLATT LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 885-5000

-and-

BIRBROWER, MONTALBANO, CONDON & FRANK, P.C.
67 North Main Street
P.O. Box 1070
New City, New York 10956
(845) 634-7010

Attorneys for Respondents

Of Counsel:
Sheila Ginsberg Riesel
Leonard G. Florescue
Donald Frank
William Frank
Stephen McSweeney

SW
St. Louis West, Inc. (9942)
NY (212) 684-3117 NJ (201) 863-8133
Printed on Recycled Paper

T18PP
2/0

QUESTIONS PRESENTED

I. Is a constitutional issue which is not raised in the trial court preserved for review in the United States Supreme Court?

II. Is a final judgment of a state court entitled to Full Faith and Credit in the courts of another state?

III. Where a potential beneficiary receives notice of a state court proceeding and contacts that state court but then intentionally fails to appear in that proceeding, does the Full Faith and Credit clause preclude collateral attack of that court's decree in another state?

IV. Where collateral attack on a judgment is not available in the state rendering the judgment, can the judgment be collaterally attacked in another state?

V. Even if the federal constitutional mandate to provide Full Faith and Credit does not require the courts of one state to enforce the judgment of another state, may a state provide a greater degree of Full Faith and Credit than is mandated by the constitution? Alternatively, may the second state enforce the judgment as a matter of comity or under its own local law?

VI. Does due process preclude determining an issue solely on papers submitted to a court? Does due process require a court to hold a hearing or to issue a written opinion responding to every argument made by a party?

VII. Is a claim to be the administrator of an estate a property right protected by due process?

VIII. If the Petitioner could not possibly prevail, as a matter of law, upon a remand of the case, should this Court grant certiorari?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 1
The Massachusetts Probate Proceeding 2
The New York Surrogate's Proceeding 3
The New York Divorce Action 4

COUNTER-STATEMENT OF FACTS 6

THE MASSACHUSETTS PROCEEDING 6

THE NEW YORK SURROGATE'S AND APPELLATE DETERMINATIONS 8

PETITIONER'S POSITION IS A TANGLE OF FACTUAL DEFICIENCIES AND CONTRADICTIONS 8

PETITIONER'S CONFLICT OF INTERESTS 9

POINT I PETITIONER'S CONSTITUTIONAL CLAIMS WERE NOT PRESERVED FOR REVIEW 11

POINT II THE POSSIBILITY OF BEING AN ESTATE FIDUCIARY IS NOT A PROPERTY INTEREST PROTECTED BY DUE PROCESS 12

TABLE OF CONTENTS
(Continued)

Page

POINT III PETITIONER CANNOT USE HIS OWN FAILURE TO PROPERLY RAISE HIS ARGUMENTS IN MASSACHUSETTS TO CREATE A DUE PROCESS CLAIM 13

POINT IV PETITIONER'S FAILURE TO PURSUE AN APPEAL IN MASSACHUSETTS PRECLUDES HIS COLLATERAL ATTACK IN NEW YORK 14

POINT V DUE PROCESS DOES NOT REQUIRE THAT A COURT HOLD A HEARING OR ISSUE A WRITTEN OPINION 15

POINT VI NEW YORK CORRECTLY GRANTED FULL FAITH AND CREDIT TO THE MASSACHUSETTS DETERMINATION; EVEN IF IT WERE INCORRECT IN DOING SO, THE SAME DETERMINATION WOULD BE REACHED UPON COMITY OR INDEPENDENT STATE LAW GROUNDS ALONE ... 16

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Adams v. Robertson, 520 U.S. 83, 117 S. Ct. 1028 (1997) . 11

Baker v. General Motors Corporation, 522 U.S. 222, 118 S. Ct. 657, 139 L. Ed. 2d 580 (1998) 18

Board of Regents v. Roth, 408 U.S. 564, 92 S. Ct. 2701 (1972); 12

Coe v. Coe, 334 U.S. 378, 68 S. Ct. 1094, 92 L. Ed. 1451 (1948) 14

Greene v. WCI Holdings Corporation, 136 F.3d 313 (2nd Cir. 1998) *certiorari denied* 525 U.S. 983, 119 S. Ct. 448, 142 L. Ed. 2d 402 (1998) 16

Greenwald v. Whalen, 609 F.2d 665 (2nd Cir. 1979) 13

Grossman v. Axelrod, 646 F.2d 768 (2nd Cir. 1981) 12

Loyd v. Loyd, 731 F.2d 393 (7th Cir. 1984) 14

Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950) 14

Neto v. Thorner, 718 F. Supp. 1222 (S.D.N.Y. 1989) 16

Sherrer v. Sherrer, 334 U.S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429 (1948), ... 14

Tennessee v. Sizemore, 200 F.3d 373 (5th Cir. 2000) .. 14, 17

TABLE OF AUTHORITIES

Page

Neiman v. City of New York, 133 A.D.2d 743, 520 N.Y.S.2d 31 (2nd Dept. 1987) 11

New York CPLR, 5401 (P. 3) 17

Will of Brown, 120 Misc. 2d 799, 466 N.Y.S.2d 988 (Surr. Ct. Westchester Co. 1983) 15

TABLE OF CONTENTS TO APPENDIX

Page

Appendix 1 – Letters From Dean Lynch to Mr. Frank, Dated March 29, 201 and to the Appellate Division, Dated March 29, 2001 ..... 1a

Appendix 2 – Transcript of Proceedings Before Weiner, J., Rockland County Supreme Court, on January 11, 1996 ..... 4a

Appendix 3 – Affirmations of Joseph P. McGlinn, Sworn to June 16, 1998 and August 1, 2000 and Preliminary Report of Successor Guardian Ad Litem Orville H. Mann, Jr., Dated September 15, 2000 ..... 28a

Appendix 4 – Chronology of Key Events / Documents in the Estate Proceedings 41a

Appendix 5 – Letter From Dean Lynch to the Clerk – Middlesex Probate and Family Court, Dated November 16, 1998 ..... 45a

Appendix 6 – Memorandum of Decision of Massachusetts Probate Court, Dated June 15, 1999 and Decree, Dated June 29, 1999 ..... 47a

Appendix 7 – Affidavit of Richard W. Renehan, Sworn to January 14, 2002 ..... 49a

PRELIMINARY STATEMENT

Respondents, the executors of the estate of Deborah Lynch, respectfully submit this brief in opposition to the application for a writ of certiorari by Petitioner, Dean Lynch, an attorney, appearing *pro se*. The Petition is without merit and, in fact, it is based on significant misstatements of both law and fact.

This application for certiorari is founded upon four primary misapprehensions of the law by Petitioner. First, a party cannot create a due process claim by his own deliberate refusal to appear before a court. Second, no one has a "property right" to be the administrator of an estate and, hence, even if the remainder of Petitioner's claims made any legal sense, there would be no constitutional issue presented because he was not deprived of any property right by the decisions below. Third, domicile is a question of fact, and a state has jurisdiction to oversee the probate of an estate if the decedent was domiciled there at the time of her death, irrespective of the decedent's marital status, and irrespective of whether or not the state has personal jurisdiction over potentially interested parties. Fourth, a "limited appearance" relates to personal jurisdiction over a party. A potential objectant to a Will is not a party to a probate proceeding, and one who wishes to make a limited appearance must present actual evidence of the jurisdictional defect to the court – something which Petitioner failed to do.

PROCEDURAL HISTORY

There are two directly relevant legal proceedings here and a third of significance for the Court to completely understand Petitioner's claims and motivations.

The Massachusetts Probate Proceeding

The first direct proceeding was the admission to probate in Massachusetts of a Will executed there on June 28, 1995 by Deborah Lynch, the decedent. [1] At the time of her death, Ms. Lynch had been a domiciliary of Massachusetts for approximately two years.

There is no question but that Petitioner received notice of the Massachusetts proceeding as he admits the same throughout his Petition. Petitioner claims to have made a special appearance in Massachusetts but that is a procedural *non sequitur*. Personal jurisdiction over Petitioner was, and is, irrelevant to whether or not the Will could be probated in Massachusetts. The only issues on a probate proceeding are the domicile of the decedent, and the presence or absence of the customary defenses of "lack of capacity" *etc.* [2]

Instead, of raising these arguments in court, Petitioner simply wrote to the Massachusetts court claiming (falsely) that Respondent's Massachusetts counsel (when presenting the Will for probate) had misrepresented the decedent's marital status. One presumes that Petitioner's argument is that decedent (if still married to Petitioner at the date of her death) could not have a different domicile than his. [3]

---

1 Decedent executed three Wills – December 1, 1993 (in Rhode Island), January 3, 1994 (in New Jersey) and June 28, 1995 (in Massachusetts). It is the third Will which was admitted to probate in Massachusetts.

2 It is irrelevant for that purpose whether Massachusetts had personal jurisdiction in the *International Shoe* sense over Petitioner or over decedent's minor daughter.

3 In fact, New York (which Petitioner claims is the relevant State) allows a wife to have a different domicile than her husband's.

However, the decedent's marital status is irrelevant both to domicile and to the jurisdiction of the probate court. The only relevant issue is where decedent was domiciled when she died.

Petitioner does not deny that he received notice of the Massachusetts court's intention to hold a hearing on the appropriate objections to probate of the decedent's Will in that state. Nor does he deny that he deliberately failed to appear before that court to make his objections, such as they were.[4] The Massachusetts probate court, accordingly, admitted the 1995 Will to probate, finding that Petitioner had not made the appropriate objections.

Significantly, Petitioner failed to appeal that decision and, under Massachusetts law, he cannot collaterally attack it. See Point IV.

The New York Surrogate's Proceeding

Rather than appeal in Massachusetts, Petitioner, instead, requested that the New York Surrogate's Court (New York's probate court) find that decedent's Wills were invalid, and grant him letters of administration over decedent's estate. This action is a collateral attack on the Massachusetts determination. This is the second directly relevant judicial proceeding in this Court.

Landsford v. Landsford, 96 A.D. 2d 832, 456 N.Y.S. 2d 583 (2nd Dept. 1983). See also New York Domestic Relations Law § 231 (McKinney's 1999).

[4] Petitioner engages in numerous attacks on the integrity and competence of the courts in both New York and Massachusetts, *e.g.* referring to the New York Court of Appeals' actions in this case as "a mockery of the rule of law".(See, *e.g.* pages 22-23 of the Petition.)

The New York Court initially dismissed Petitioner's application because he had failed to include copies of the prior Wills. He amended his pleading but referred to, and annexed, only two of the three Wills that decedent had executed. The missing one was the 1994 Will which was prepared by Petitioner's friends and executed in Petitioner's presence. [5] The New York Court learned of the second Will only from Respondents.

Ultimately, the New York Surrogate dismissed Petitioner's claims because of the prior Massachusetts decision and New York's Appellate Division affirmed on the basis of Full Faith and Credit.

Petitioner then sought reargument from the Appellate Division or, alternatively, leave to appeal to the New York's highest court, the Court of Appeals. Both motions were denied. The Court of Appeals denied Petitioner's motion for leave to appeal. This Petition for certiorari ensued.

The New York Divorce Action

The third proceeding is the divorce action between Petitioner and decedent. That action is still pending in the same Appellate Division in New York. On January 11, 1996, approximately six months after the 1995 Will probated in Massachusetts was executed in that State, a stipulation was

---

[5] Petitioner originally denied knowing of this Will and then recanted when confronted with an audio tape showing his presence during its preparation and at its execution. See Appendix 1.

It is this failure to apprise the Court of the 1994 Will's existence which is the basis of the disciplinary proceeding against Petitioner in New Jersey. (See Petition, page 21)

entered into on the record in the New York Supreme Court (the trial court with jurisdiction over divorce matters) in Petitioner's presence and with his cooperation. (See Appendix 2 for the transcript of this proceeding). In court, that day, decedent testified to the grounds for divorce, without objection from Petitioner, the decedent's divorce counsel moved for the court to grant the divorce and the motion was granted. [6] Certain provisions of the stipulation (relating only to the parties' child) were contingent upon approval by a guardian ad litem. Ultimately, the first and second guardians both approved those provisions as modified. [7] These last events occurred four years after decedent's death. Nonetheless, despite the fact that the court had held the marital action open for those four years, it ruled that the matrimonial action had abated when decedent died.

That determination is currently on appeal to the Appellate Division in New York and was argued on January 29, 2002. Petitioner's claim that Massachusetts had no jurisdiction is founded primarily on his false and irrelevant claim that Respondents' counsel misrepresented decedent's marital status to the Massachusetts court. If the New York Appellate Division finds that Respondent and decedent were divorced, even that spurious claim would fail.

---

6 If Petitioner truly believes that decedent was incompetent to make the 1995 Will (a claim he has made in every court, including this one), then he committed a fraud on the New York divorce court when he entered into that stipulation.

7 Petitioner refers this Court to the first law guardian's preliminary report (Petition, p. 20) but fails to mention the later reports by both law guardians which reach a contrary conclusion and are critical of Petitioner's motives. See Appendix 3.

COUNTER-STATEMENT OF FACTS

The facts of this case are significantly different from those asserted by Petitioner. For the Court's convenience, a chronology of key events is attached as Appendix 4.

THE MASSACHUSETTS PROCEEDING

The decedent was a domiciliary of the State of Massachusetts at the time of her death on September 5, 1996. Decedent's 1995 Will was filed with the Middlesex County Probate and Family Court on July 22, 1997. The nominated executors under the Will, Respondents herein, commenced probate proceedings in that Court and duly served all interested persons--including Petitioner--by November 4, 1998.

On November 6, 1998, Petitioner filed a petition for Letters of Administration in Rockland County, New York, alleging the invalidity of only two of decedent's prior Wills and concealing the existence of the Will executed at his behest. (See footnote 5.)

Petitioner wrote to the Massachusetts Court on November 16, 1998 acknowledging that he knew of the commencement of the Massachusetts proceedings and requesting that the Court either recognize that it lacked jurisdiction over him, or, in the alternative, set the matter down for a full hearing. On January 21, 1998, Petitioner filed a Notice of Special Appearance and Affidavit of Objections to Petition in the Massachusetts Court.

On June 3, 1999, both the Court and Respondents' counsel gave notice to Petitioner that the Court would hold a pretrial conference on June 15, 1999. The Court specifically

stated that the case might be ordered to immediate trial on that date if it appeared that one party, through a failure to appear at the conference or otherwise, would not present a case. [The Court should note that Petitioner requested a hearing in his November 16, 1998 letter. See Appendix 5].

On June 10, 1999, Petitioner wrote a second letter to the Massachusetts Court acknowledging receipt of the Court's Notice and Order, and objecting that the Court did not have jurisdiction over him. Petitioner stated in his letter that he had made a "special appearance" to contest jurisdiction, and would not attend the conference.

On June 14, 1999, Petitioner sent a third letter [8] by facsimile to the Massachusetts Court stating that he would not appear on June 15th, and requesting that the Court take no action until his Petition for Letters of Administration in New York was resolved.

Petitioner failed to appear on June 15, 1999 and Justice Boorstein admitted decedent's 1995 Will to probate, based on the submissions of Respondents and the fact that no proper or evidentiary objections were interposed. [9] Judge Boorstein expressly and properly rejected Petitioner's personal jurisdiction argument by noting that it was irrelevant to whether Massachusetts could probate the 1995 Will.

---

8 As a lawyer, Petitioner had to know that such letters are not evidentiary, and that even if he were correct that decedent was not domiciled in Massachusetts, the court could not consider or act on them.

9 A review of Petitioner's Appendix F shows that Respondents' Massachusetts counsel, on that occasion, fairly advised the court of Petitioner's legal positions.

Justice Boorstein further noted that Petitioner had failed to raise the conventional objections as to domicile, undue influence, lack of capacity or improper execution, and specifically found that he would not present a case. (Appendix 6) Petitioner never appealed the Massachusetts Decree and, as noted, it is not subject to collateral attack.

Petitioner received notice of the Massachusetts conference date and deliberately failed to appear because he was concerned that a decision on the merits in Massachusetts would have precluded him from proceeding in New York and because he claimed he could not have received a full and fair hearing in Massachusetts. (Petition, p. 19)

THE NEW YORK SURROGATE'S AND APPELLATE DETERMINATIONS

On September 8, 1999, the New York Surrogates Court dismissed Petitioner's application and that decision was affirmed by the New York Appellate Division on Full Faith and Credit grounds. That determination is the subject of this Petition.

PETITIONER'S POSITION IS A TANGLE OF FACTUAL DEFICIENCIES AND CONTRADICTIONS

Petitioner stated that he failed to disclose the January 1994 Will because he "knew" it had been revoked by the subsequent June 1995 Will. This statement, of course, makes no sense, since it is in direct contradiction of Petitioner's sworn contention that the June 1995 Will is invalid. If the June 1995 Will were invalid, then the January 1994 Will would not have been revoked and would, itself, be valid.

Petitioner told the New York court that the June 1995 and December 1993 Wills were invalid because the decedent lacked testamentary capacity. [10] Nevertheless, in January 1996, about six months after the June 1995 Will was executed, Petitioner appeared before the same New York Judge to whom he later alleged the decedent's incapacity, entered into a contract with decedent in open court, and allowed her to testify without objection in the divorce proceeding. (See Appendix 2)

Petitioner has never offered any credible evidence to establish his incapacity claim. He does not allege specific facts demonstrating an impaired state of mind at the time of the execution of the 1993 and 1995 Wills. His "proof" of this claim is a single entry on an unauthenticated death certificate that was never admitted into evidence by any court. Even if Petitioner had presented this document to a Court it would in no way constitute competent evidence of Petitioner's claims.

Petitioner never presented anything at all "supporting" his claims of undue influence and duress.

Petitioner's Conflict of Interests

There is a fundamental problem with granting fiduciary status to Petitioner--the relief he sought from the New York Court. Petitioner has stated his intention to exercise an alleged spousal right of election against decedent's estate, should it be determined that he was the spouse of the decedent when she died, and to attack the probated Will. (See *e.g.* Petition, page 21) While Petitioner

---

[10] Of course, the 1994 Will, executed in Petitioner's presence, was signed after decedent was supposedly incompetent. The internal contradictions in Petitioner's story are many and evident.

claims to be waging this litigation for the sake of his daughter (Petition, pages 20-22 and 27) the fact is that the Will leaves virtually everything to that daughter. Where is the advantage for her in Petitioner's proposed attack on the probated Will?

Thus, Petitioner's interests are in direct opposition to those of his daughter. Under New York law, that alone disqualifies Petitioner from being appointed the administrator even if New York had not properly dismissed the application in light of the Massachusetts decree.

Both guardians ad litem in New York recognized that fact. Petitioner misstates the guardians' position to this Court. (Petition. p. 20) In fact, neither guardian agreed with Petitioner and both questioned his motives. (Appendix 3)

Petitioner also fails to explain why his claims could not have been protected in Massachusetts if he produced evidence that decedent was not a Massachusetts domiciliary or that she was incompentent when she executed the 1995 Will, or by asserting his elective share and the daughter's rights in that State. In Appendix J of his Petition (a 1994 newspaper article), Petitioner claims that a 1992 New York law permits him to attack certain trusts if he is the widower. (Petition p. 21) Petitioner only reveals his lack of understanding of the law. Prior to 1992 a decedent in New York could "defeat" his spouse's elective share by providing in his Will a trust with a corpus equal to 1/3 of the estate. It is that rule which was abrogated. After that change, a trust *created by the decedent* will not defeat the right of election. Where Petitioner loses his way is in his confusion of the difference between a trust created by the decedent and those created by third-parties – which is the case with the trusts here. Third-party created trusts, under New York law, are simply not part of the decedent's estate and therefore are not

subject to the surviving spouse's elective share, and, thus, New York law would not avail Petitioner.

POINT I
PETITIONER'S CONSTITUTIONAL CLAIMS WERE NOT PRESERVED FOR REVIEW

At page 10 of the Petition, Petitioner states that his claim of a denial of due process "was raised to the Appellate Division". By his own admission, Petitioner's due process claims were not presented to the New York Surrogate's Court. Neither of the two New York appellate courts made any reference to Petitioner's due process claims. Under those circumstances this Court assumes that the constitutional issue was not properly presented. *Adams v. Robertson*, 520 U.S. 83, 86, 117 S. Ct. 1028, 1029 (1997).

New York appellate courts will not entertain issues not raised at trial. *Neiman v. City of New* York, 133 A.D. 2d 743, 520 N.Y.S. 2d 31 (2nd Dept. 1987); Martin *Mechanical Corporation v. P. J. Carlin Construction Co.*, 132 A.D. 2d 688, 518 N.Y.S. 2d 166 (2nd Dept. 1987). Accordingly, Petitioner's constitutional claims were not preserved for review in this Court and the Petition must be denied.

POINT II

THE POSSIBILITY OF BEING AN ESTATE FIDUCIARY IS NOT A PROPERTY INTEREST PROTECTED BY DUE PROCESS

When reduced to its essence, Petitioner's complaint is that he is not the person who has the fiduciary responsibility for administering decedent's estate. It is that fiduciary status that Petitioner seeks to parlay into financial gain for himself by attacking the Will and the trusts created for decedent's benefit by her family. (Petition, p. 21) However, there is no necessity that Petitioner be decedent's administrator before raising any or all of his claims as to the validity of the Wills, or the propriety of administration of the estate, or the marshalling of the estate's assets, or his or decedent's daughter's claims against the estate under the Will, in intestacy, or as surviving spouse or guardian of the child.

Even if the estate were administered in New York, it is only the underlying claims that might constitute property rights, and Petitioner would still have had to prove his entitlement thereto.

It is only the possibility of being decedent's administrator that Petitioner has conceivably lost. That contingency cannot possibly rise to the level of "property" or of a property right protected by the Due Process clause. Property is defined by looking to underlying state law. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972); *Grossman v. Axelrod*, 646 F. 2d 768, 770-71 (2nd Cir. 1981). In New York far more concrete claims such as "prospective [Medicaid] reimbursement payments" and an "interest in [maintaining] a particular rate of reimbursement" have been held not to be "property". *Hurlbut v. Whalen*, 58

A.D. 2d 311, 317, 396 N.Y.S. 2d 518 (4th Dept. 1977); *Greenwald v. Whalen*, 609 F. 2d 665, 668 (2nd Cir. 1979).

POINT III

PETITIONER CANNOT USE HIS OWN FAILURE TO PROPERLY RAISE HIS ARGUMENTS IN MASSACHUSETTS TO CREATE A DUE PROCESS CLAIM

Petitioner's objection to Massachusetts's exercise of jurisdiction is twofold: (1) there was a "fraud" [11] on the Massachusetts court and (2) there was no personal jurisdiction over him. Petitioner admits that he did not raise either claim at the Massachusetts hearing. Rather he wrote letters and filed documents making his claims, but deliberately failed to appear at the hearing (of which he had ample notice), and offered no evidentiary proof whatsoever of any of his claims.

It has consistently been held, in these circumstances, that any claimed due process issue has been waived. In *Loyd v. Loyd*, 731 F. 2d 393 (7th Cir. 1984), also involving a collateral attack on a determination made in another state's probate court, the widow was given notice of the proceeding

---

[11] The Court will have noted that the document to which Petitioner refers at page 6 of the Petition (his Appendix F) quite simply has nothing whatsoever to do with Petitioner's claims of fraud.

At this juncture we must respectfully assert a point of personal privilege. Petitioner falsely accuses Respondents' counsel, Richard W. Renehan, of having "admitted" to lying to the Massachusetts Court (Petition. p. 6) Attorney Renehan's affidavit (attached hereto as Appendix 7) states that he (1) made no misrepresentations to the Massachusetts Court, and (2) has never told that court that his statements to it were untrue.

and she chose not to place her proof before the court. Under those circumstances, functionally identical to those here, the Seventh Circuit held that there was no denial of due process. The Court noted that due process requires only notice reasonably calculated to apprise the interested parties of the pendency of the action and that those parties have an opportunity to present their objections. *Loyd*, ibid. at 400; *Mullane v. Central Hanover Bank*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950). See *Sherrer v. Sherrer*, 334 U.S. 343, 68 S. Ct. 1087, 92 L. Ed. 1429 (1948), ["If respondent failed to take advantage of the opportunities afforded him, the responsibility is his own [it will not] provide a basis for subsequent attack in the courts of a sister State ..."]; *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association*, 455 U.S. 691, 709-10, 102 S. Ct. 1357, 1369, 71 L. Ed. 2d 558 (1982); *Wozniak v. Conry*, 236 F. 3d 888, 890 (7th Cir. 2001) *certiorari denied* 121 S.Ct. 2243, 150 L.Ed.2d 231 (U.S. June 11, 2001) ["one who has spurned an invitation to explain himself can't complain that he has been deprived of an *opportunity* to be heard." (emphasis in original)] and *Tennessee v. Sizemore*, 200 F. 3d 373, 381 (5th Cir. 2000).

POINT IV

PETITIONER'S FAILURE TO PURSUE AN APPEAL IN MASSACHUSETTS PRECLUDES HIS COLLATERAL ATTACK IN NEW YORK

Petitioner chose not to appeal the Massachusetts decision in that state. Thus, that determination was no longer subject to collateral attack in Massachusetts (*Bloom v. Bloom*, 337 Mass. 480, 482, 150 N.E. 2d 24, 26 (1958)). Therefore, Petitioner has no right to attack the determination collaterally either in New York or in this Court. *Coe v. Coe*, 334 U.S.

378, 384, 68 S. Ct. 1094, 1096, 92 L. Ed. 1451 (1948); *Sherrer v. Sherrer*, above.

Even if the New York courts had applied New York law, as Petitioner wishes, they would have reached the same conclusion. In Massachusetts mere publication of notice of a probate proceeding is considered valid notice to the world. This is so even where fraud is alleged. *Farquhar v. New England Trust Co.*, 261 Mass. 209, 212, 158 N.E. 836, 838 (1927). That rule dovetails completely with the decision of New York's highest court in *Matter of Horton*, 217 N.Y. 363, 367, 111 N.E. 1066 (1916). See also see *Will of Brown*, 120 Misc. 2d 799, 802, 466 N.Y.S. 2d 988, 991 (Surr. Ct. Westchester Co. 1983). As Petitioner had actual notice of the Massachusetts proceeding and indeed communicated with the court about it, *a priori*, he has no standing to bring a collateral attack on the Massachusetts decree in New York.

POINT V

DUE PROCESS DOES NOT REQUIRE THAT A COURT HOLD A HEARING OR ISSUE A WRITTEN OPINION

Petitioner's claims were dismissed by the New York courts on papers and without holding a formal adversarial hearing on his claims that due process obligated the courts to hold a hearing on his claims as to the "fraud" on the court in Massachusetts and to write a formal opinion rejecting his arguments. [12] However, a court has no due process obligation to hold a hearing. The only requirement is notice and an

---

12 Ironically, at page 8 of his Petition he claims that Justice Weiner had extensive "personal knowledge of the facts and circumstances".

opportunity to be heard. As Petitioner was the claimant in New York, obviously, he had notice. In this Court he fails to recognize the distinction between an opportunity "to be heard" and a hearing. All that due process requires is the opportunity to raise one's arguments to the court, which petitioner had. *Greene v. WCI Holdings Corporation*, 136 F. 3d 313, 315-16 (2nd Cir. 1998) *certiorari denied* 525 U.S. 983, 119 S. Ct. 448, 142 L. Ed.2d 402 (1998) held that the dismissal of a proceeding (as occurred here) without an oral hearing did not violate due process. "The opportunity to be heard orally on questions of law is not an inherent element of procedural due process, even when substantial questions of law are involved." See also *Wozniak v. Conry*, 236 F. 3d 888, 890 (7th Cir. 2001) holding that "due process does not require that a formal, adversarial hearing precede every decision affecting property."

POINT VI

NEW YORK CORRECTLY GRANTED FULL FAITH AND CREDIT TO THE MASSACHUSETTS DETERMINATION; EVEN IF IT WERE INCORRECT IN DOING SO, THE SAME DETERMINATION WOULD BE REACHED UPON COMITY OR INDEPENDENT STATE LAW GROUNDS ALONE

It is settled law, which Petitioner does not dispute, that a court's jurisdiction to administer an estate is solely dependent upon the decedent's domicile on the date of death. Section 3-5.1 (b) (2) of the Estates, Powers and Trusts Law (EPTL) of the State of New York provides that the law of the decedent's domicile at his death controls both the testamentary and intestate disposition of the decedent's estate. *Neto v. Thorner*, 718 F. Supp. 1222, 1224 (S.D.N.Y. 1989). It is the rendering State, not the forum state, whose law is used to determine if Full Faith and Credit should be accorded

a judgment. *Tennessee v. Sizemore*, 200 F. 3d 373, 378 (5th Cir. 2000). In *Matter of Horton*, 217 N.Y. 363, 367, 111 N.E. 1066 (1916) the court held that a probate proceeding in another state was "conclusive" if it could not be collaterally attacked in that other state. (217 N.Y. at 367). See also *Will of Brown* and Point IV, above.

Petitioner also fails to appreciate the fact that there are two purely non-constitutional bases upon which the New York courts could have chosen to follow and give precedence to the Massachusetts decision. Petitioner makes two separate legal errors. First, Petitioner assumes that a court cannot grant Full Faith and Credit to any determination which is not strictly entitled to it. However, Full Faith and Credit is only a minimum requirement of our republican form of government. No constitutional bar precludes a state court from applying Full Faith and Credit *more broadly* than it is required to do by the Constitution. In *Underwriters National Assurance Company* above this Court said that a court "may" inquire into jurisdiction before giving Full Faith and Credit to a judgment. (455 U.S. at 705, 102 S. Ct. at 1357). This Court did not say that the court "must" do so.

Thus, even if Petitioner were correct in his assertion that the Massachusetts determination was not strictly entitled to Full Faith and Credit, there was no constitutional error when the New York courts chose to afford full faith recognition to that determination. [13]

---

13 Petitioner's partial quotation from New York CPLR 5401 (p. 3) is misleading and the statute does not comport with his claims. In fact, that section is merely a *definition* of a "foreign judgment" and says nothing about whether a judgment not precisely fitting that definition can have preclusive affect in New York.

Second, even if Full Faith and Credit did not apply and it was improper to afford such recognition to the Massachusetts decree, nonetheless, the New York courts could have honored the Massachusetts determination on the basis of comity. *Ehrlich-Bober & Co. v. University of Houston*, 49 N.Y. 2d 574, 427 N.Y.S. 2d 604, 404 N.E. 2d 726 (1980); *Will of Brown*, above. Simply put, no constitutional issue arises. [14]

---

[14] Petitioner's arguments based upon alleged New York public policy are also misplaced. In *Baker v.* General *Motors Corporation*, 522 U.S. 222, 233, 118 S. Ct. 657, 663-64, 139 L. Ed.2d 580 (1998) this Court noted that its "decisions support no roving 'public policy exception' to the Full Faith and Credit due *judgments*." (emphasis in original)

WHEREFORE, the Petition for Certiorari should be denied.

Respectfully submitted,
Blank Rome Tenzer Greenblatt LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 885 – 5000

Birbrower, Montalbano, Condon
& Frank, P.C.
67 North Main Street
P.O. Box 1070
New City, New York 10956
(845) 634 – 7010

Co-counsel for Plaintiff-Appellants

Of Counsel:
Sheila Ginsberg Riesel
Leonard G. Florescue
Donald Frank
William Frank
Stephen McSweeney

No. 01-1038

In The

Supreme Court of the United States

October Term, 2001

ADMINISTRATION PROCEEDING ESTATE OF DEBRA LYNCH a/k/a Debra L. Lynch & Debra Franchi, Deceased,

DEAN LYNCH,

Petitioner,

– against –

PATRICIA FLAHERTY, LINDA A. KACEWICZ, AND MICHAEL P. FRANCHI,

Respondents.

On Petition for a Writ of Certiorari to The New York Court of Appeals.

APPENDIX

Appendix 1 1a
Dean Lynch Letters
[Pages 1a – 3a]

Dean Lynch
Attorney at Law

3-29-2001

Dear Mr. Frank:

In light of Mr. Uscher's "refreshed" recollection and that being the case, I believe I owe you an apology for my comment to you after the oral argument of 11-17-2000. It appears under the facts and circumstances of those years, I was "that stupid" in January, 1994.

Please accept my apology.

Very truly yours,

Appendix 1
Dean Lynch Letters

3-29-2001

Appellate Division, Supreme Court
Second Judicial Department
State of New York
45 Monroe Place
Brooklyn, NY 11201

Att: James Edward Pelzer, Clerk of the Court
Re: Estate of Debra Lynch
Docket No. 1999-09132

Dear Mr. Pelzer:

There is currently pending a Motion for Reargument which was returnable March 2, 2001. Included with my response was an Affidavit from Arthur Uscher, Esq. dated March 1, 2001.

I was advised today that Mr. Uscher's Affidavit at Par. 7 is in error as to his recollection. Therefore, I enclose for filing an Amended Affidavit from Mr. Uscher dated March 29, 2001.

It is noted that Mr. Uscher states that " I reviewed the tape. again and find I was mistaken in my recollection that Dean Lynch arrived '...shortly after the execution....' The tape shows that Dean arrived before the Will was executed."

I would point up to this Court that Mr. Uscher's original "recollection" was mine as well. The tape saying otherwise, would demonstrate that my recollection of the events of that day, January 3, 1994, may have been in error as well.

I continue to believe the 1994 alleged will is and has always been a "red herring" and has absolutely no bearing on the

issues before this Court. The most important issue being the death certificate and the legal finding that fraud is entitled to full faith and credit.

If this Court disagrees that the issue of the 1994 alleged will is a "red herring", I would respectfully request that the motion be held in abeyance until a copy and transcript of said tape can be obtained and reviewed by the parties and the Court.

Thank you for your attention to this matter.

Respectfully submitted,

Dean Lynch
Pro Se

cc: William Frank, Esq.
Arthur Uscher, Esq. wo/enc.

Appendix 2
Transcript of Proceedings on January 11, 1996
[Pages 4a – 27a]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
ORIGINAL

----------x

DEBRA LYNCH,

Plaintiff,

-against-

DEAN LYNCH,
Defendant.

----------x

ORDER

Index No. 1109/95

Rockland County Courthouse
New City, New York
Thursday, January 11, 1996

BEFORE:
THE HON. ALFRED J. WEINER,
Justice of the Supreme Court.

APPEARANCES:
SHAYS, KEMPER
Attorneys for Plaintiff
276 Fifth Avenue - Suite 306
New York, New York 10001-4509
BY: KENNETH D. KEMPER, ESQ.,
-and-
STANLEY D. HEISLER, ESQ.,
Of Counsel

DEAN LYNCH, ESQ.,
Defendant Appearing Pro Se ;
1 Kalisa Way - Suite 202

Paramus, New Jersey 07653-0159

BURKE & McGLINN, ESQS.,
Guardian Ad Litem
100 Washington-Avenue
Suffern, New York 10901
BY: JOSEPH P. McGLINN, ESQ., Of Counsel
Ellen L. Guardiano,
C.S.R., Senior Court Reporter.

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE.COURT OFFICER: Remain seated, please; come to order.

THE COURT: This matter has been scheduled for trial for -- I believe it was scheduled two days ago and there have been continuing discussions between the parties, both in chambers and out of chambers and the Court has been advised by counsel for the Plaintiff that the parties wish to place a stipulation on the record at this time.

Counsel may proceed.

MR. KEMPER: First, I would like to thank your Honor for your Honor's assistance in helping us resolve what has been a very difficult matter. And I'd also like to thank your Honor for bringing in, a guardian who also made very constructive suggestions in helping us to dispose of this.

I would like you, Debra and Mr. Lynch to listen to this very carefully.

It is stipulated and agreed between the parties as follows: The Defendant withdraws his answer to the verified complaint and the Plaintiff withdraws her second cause of action

and agrees to proceed on her first cause of action for constructive abandonment.

The judgement of divorce to be entered herein will not be entered until confirmation of the stipulation of settlement which is .as follows:

1. The Plaintiff agrees to transfer her interest in the marital residence located at 101 Greenbush Road, Tappan, New York to the Defendant by deed and the Defendant agrees to transfer his interest in the Worcester condominium owned by the parties to the Plaintiff.

2. The Plaintiff waives her interest in equitable distribution and for a distributive award with respect to the residence and Defendant's law practice and any other assets of the Defendant. The Defendant waives his interest in equitable distribution or by way of distributive award with respect to Plaintiff's separate property and any appreciation thereto.

3. The Defendant will receive and own all of the contents of the marital residence

Appendix 2
Transcript of Proceedings on January 11, 1996

at 101 Greenbush Road, Tappan except for the agreed-upon list of property as follows, which shall be the possession of the Plaintiff and may be removed on 20 day's notice:

Those items are paintings by the Plaintiff, an antique painting at the front door, her mother's jewelry, Christmas dishes, Madeline's Christmas dress, linen closet, Madeline's baby book, photo albums, a jewelry box, a Lladro ballerina statue, sculptures made by steel or in good shape, garden winter sweater and a heart sweater and the pictures to be retained, to be excluded, by the Plaintiff, are pictures of boats and water scenes, a portrait of the, husband and a self-portrait of the Plaintiff which has been given to her daughter. Also remaining is a handmade paper artwork and a plexiglass display case which was in the marital residence and will go to the parties' daughter.

4. The Court, on consent, will appoint Joseph McGlinn of Burke & McGlinn as guardian for the property of the child, Madeline Susan

-Lynch v Lynch-

Lynch, age eight. Mr. McGlinn will undertake an investigation to ascertain the value of all remainder interests in --

THE COURT: Excuse me, I hate to interrupt, but just for one second, maybe you should indicate that he's appointed as guardian ad litem. He's not been appointed guardian of the property.

MR. KEMPER: Fine.

THE COURT: If the parties wish to subsequently --

MR. KEMPER: Fine, Judge.

THE COURT: -- the parties may consent to him being appointed as guardian of the property.

MR. KEMPER: Being appointed as guardian ad litem in this proceeding Mr. McGlinn will undertake an investigation to ascertain the value of all remainder interests in inalienable trusts of Debra Lynch and the 1/4 of 1% interest in the Sea Breeze property owned by Madeline Lynch, all whether held directly or indirectly. The guardian ad litem shall have authority to obtain information,

Appendix 2
Transcript of Proceedings on January 11, 1996

review and hire experts to determine the value of the interest. The guardian shall report to the Court with recommendations as to the proposed stipulation of settlement renouncing Madeline's remainder interests in the inalienable trusts and her 1/4 of 1% interest in Sea Breeze as to whether the child's best interests are being served by the renunciation of her rights. If approved by the Court, a judgment shall issue respecting the renunciation of those rights.

The proposed settlement in exchange for the renunciation as as follows: A $1,000,000 irrevocable trust will be created for the sole benefit of Madeline Lynch with the income only payable to Debra Lynch as hereinafter set forth. This trust to be funded with an initial payment of $400,000 to be paid within 60 days of approval by this Court of the. settlement with the remaining funds to be contributed at the rate of at least $100,000 per annum to be guaranteed by letter of credit from a reputable banking institution. The trustee of the trust shall be the U.S. Trust

-Lynch v Lynch-

Company in New York which shall also manage the portfolio of the trust corpus.

The fee of Joseph McGlinn, Esquire as guardian ad litem shall be paid as ultimately determined by this Court. All income from the trust shall be paid during her life to Debra Lynch for her support and maintenance. If the necessary and appropriate expenses of Debra Lynch exceed the annual income of the trust the trustee shall advance future trust income to meet those expenses and then accumulate income thereafter to make up for any expenses advanced so that ultimately the principal amount of $1,000,000 remains inviolate.

The trust shall have the right, upon application, to pay £or the college and graduate school expenses of the child Madeline. The trust shall accumulate all other income except the income from the trust shall be payable to Madeline Lynch after her. 21st birthday. Principal distributions along with accumulated income from the trust shall be paid to Madeline at the rate of 25% at age

Appendix 2
Transcript of Proceedings on January 11, 1996

21, 25% at age 25, 25% at age 30 and 25% at age 35. If Madeline dies with issue, prior to completion of payments, .any unpaid payments shall go equally to said issue and if Madeline dies without issue any unpaid payments shall go to a foundation for the benefit of children : such as Hale House or other similar charity.

The current custody order in effect shall be entered as a final order along with the visitation orders now .in existence, provided, however, that the visitation bond order by Justice Kenneth Rudolph on May 25, 1995 shall be vacated forthwith and the bond that has been posted shall' be returned.

Given the financial and other personal circumstances of the parties each of the parties waives maintenance and Defendant waives receipt of child support to the fullest extent permitted by law and agrees to accept what is provided in the Child Support Standards Act as the minimum payment payable, which is the amount of $25 monthly, as and for child support. The New Jersey action pending, between the parties shall be withdrawn along

-Lynch v Lynch-

with the appeal and the current order with respect to the opening and access to the safe deposit box of the Plaintiff shall be dismissed.

Your Honor, that completes the stipulation of the parties.

THE COURT: Off the record.

(There was a discussion held off the record)

MR. KEMPER: . It has been agreed by the parties that in the event the report of the guardian ad litem approves the renunciation of Madeline's residuary rights{ the parties agree that there will be commenced in the Surrogate's Court in this County a proceeding seeking to have Mr. McGlinn appointed as guardian of the property of the child for further approval by the Surrogate's Court of the settlement and renunciation of rights.

THE COURT: Off the record.

(There was a discussion held off the record)

MR. KEMPER: I'll call Debra Lynch to the witness stand.

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE COURT: If it's easier for her(she can sit right there. It's not necessary for her to step up.

DEBRA LYNCH(the Plaintiff herein, having been first duly sworn, was examined and testified as follows:

THE COURT: Please state your name and address.

MS. LYNCH: Debra Lynch, 16 Westcliff Road, Weston(Massachusetts.

THE COURT: Thank you very much.

MR. KEMPER: Mrs. Lynch, you are the Plaintiff in this proceeding; is that correct?

MS. LYNCH: Yes.

MR. KEMPER: And were you and Mr. Lynch married in a religious ceremony on the 1st day of August, 1981 in Weston, Middlesex County, Commonwealth of Massachusetts?

MS. LYNCH: Yes.

MR. KEMPER: And ever since you and he have been husband and wife; is that correct?

MS. LYNCH: Yes

MR. KEMPER: And for more than two years prior to the commencement of this action

-Lynch v Lynch-

continuously was Mr. Lynch a resident of the State of New York?

MS. LYNCH: Yes.

MR. KEMPER: And did you and Mr. Lynch live within the State of New York as husband and wife?

MS. LYNCH: Yes.

MR. KEMPER: Is there one child of your marriage, a daughter, Madeline, born August 31, 1987?

MS. LYNCH: Yes.

MR. KEMPER: And is it true that no decree of divorce, annulment or separation has been obtained by you against Mr. Lynch or by him against you in any Court of competent jurisdiction of this state or any other state, territory or dependency of the United States or in any foreign country?

MS. LYNCH: Yes.

MR. KEMPER: And is it true, to the best of your knowledge, that no other action is now pending between you and Mr. Lynch for a divorce, annullment or separation in the Courts of New York or in any other state or

Appendix 2
Transcript of Proceedings on January 11, 1996

territory or dependency of the united States or in any foreign country?

MS. LYNCH: Yes.

MR. KEMPER: And were both you and Mr. Lynch over the age of 18 at the time that this divorce action was commenced?

MS. LYNCH: Yes.

MR. KEMPER: And will you take all steps within your sole power, prior to entry of a judgement of divorce, to remove any barriers to Mr. Lynch's re-marriage?

MS. LYNCH: Yes.

MR. KEMPER: Now commencing in or about the fall of 1992 and continuing to the present time did Mr. Lynch wilfully refuse to engage in marital relations with you despite your requests that he engage in marital relations?

MS. LYNCH: Yes.

MR. KEMPER: And was his refusal to engage in marital relations by you not caused by any physical impediment on his behalf?

MS. LYNCH: Yes.

MR. KEMPER: And was his action in that regard unjustified in all respects?

-Lynch v Lynch-

MS. LYNCH: Yes.

MR. KEMPER: And has that abandonment of you continued for more than a year prior to the commencement of this action?

MS. LYNCH: Yes.

MR. KEMPER: And do you ask that this Court grant you a .judgement of divorce and further provide you with the relief agreed to in the stipulation that we placed upon the record settling this proceeding?

MS. LYNCH: Yes.

MR. KEMPER: Now you've had a chance to hear me read the stipulation and agreement; is that correct?

MS. LYNCH: Yes.

MR. KEMPER: And you've had an opportunity to review it with me and with Mr. Heisler?

MS. LYNCH: Yes.

MR. KEMPER: And you've also had an opportunity over the last several days to discuss it with your. father who is present?

MS. LYNCH: Yes.

MR. KEMPER: And with your sister Linda

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-,

who is present?

MS. LYNCH: Yes.

MR. KEMPER: And your sister Patty?

MS. LYNCH: Yes.

MR. KEMPER: And you rely on their advice and wisdom and counsel in assisting you to make these determinations?

MS. LYNCH: Yes.

MR. KEMPER: And did you make this agreement of your own free wi11?

MS. LYNCH: Yes.

MR. KEMPER: And no one forced you to do anything?

MS. LYNCH: Yes.

MR. KEMPER: Or made you any promises to make you enter into this if you did not want to; is that correct?

MS. LYNCH: Yes.

MR. KEMPER: And you're satisfied that this takes adequate care of your daughter?

MS. LYNCH: Yes.

MR. KEMPER: Now you have not taken today any alcohol or medication which would impair your judgment; is that correct?

-Lynch v Lynch-

MS. LYNCH: Yes.

MR. KEMPER: And you're doing this of your own free will?

MS. LYNCH: Yes.

MR. KEMPER: I have no further questions of the witness, your Honor.

THE COURT: Mr. Lynch, do you have any questions?

MR. LYNCH: I have no questions.

THE COURT: I'd just like to ask you, Ms. Lynch do you have any questions of the Court at this time?

MS. LYNCH: No.

THE COURT: Are you satisfied with the stipulation that has been entered into?

MS. LYNCH: Yes.

MR. KEMPER: Do you want me to do voir dire of Mr. Lynch or do you want to do it?

Why don't you do it? He can be sworn from his seat.

DEAN LYNCH, the Defendant herein, having been first duly sworn, was examined and testified as follows:

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE COURT: please state your name and address for the record.

MS. LYNCH: Dean Lynch, 101 Greenbush Road, Tappan, New York.

MR. KEMPER: Mr. Lynch, you've heard the stipulation entered into on the record today?

MR. LYNCH: Yes.

MR. KEMPER: And you've had an opportunity to consult with your own independent counsel with respect thereto?

MR. LYNCH: Yes.

MR. KEMPER: And. :you are an attorney; are you not, sir?

MR. LYNCH: In the State of New Jersey, yes.

MR. KEMPER: And you've had a chance to reflect upon the various terms which we've negotiated over the course of the last three days, I believe?

MR. LYNCH: Yes.

MR. KEMPER: And are you satisfied with the terms of that agreement?

MR. LYNCH: Yes, I am.

MR. KEMPER: Are you entering into this

-Lynch v Lynch-

agreement of your own free will?

MR. LYNCH: Yes.

MR. KEMPER: .And is it true that no promises have been made to you other than the agreements made in the stipulation which has been placed on the record?

MR. LYNCH: Just the agreement here.

MR. KEMPER: And you have not taken today any drugs or alcohol which would affect your judgment or prevent you from entering freely into this agreement; is that correct?

MS. LYNCH: No.

MR. KEMPER: Your Honor, I would move for a judgement of divorce in the Plaintiff's favor --

THE COURT: I just want to --

MR. KEMPER: -- incorporating--

THE COURT: Off the record.

(There was a. discussion held off the record)

MR. KEMPER: I would move at this time for a judgement of divorce incorporating by reference the terms of the stipulation that we placed upon the record and providing for that

Appendix 2
Transcript of Proceedings on January 11, 1996

to survive. I would ask that the Court retain continuing, jurisdiction of this matter and leave this matter further open awaiting the report of Mr. McGlinn with respect to the matters that have been assigned to him so that we can finally conclude this proceeding.

I would also ask that your Honor sign forthwith an order directing the County Clerk to release the bond which is now held by the Rockland County Clerk.

THE COURT: Mr. Lynch, did you understand the. application that was just made?

MR. LYNCH: Yes. As to the release of the visitation bond.

THE COURT: Well, no. That was the second part of the application. It was a two-part application.

MR. LYNCH: The first part, yes, concerning Mr. Lynch awaiting the outcome as to the settlement of the guardian ad litem; otherwise, the divorce is final as to those issues.

THE COURT: Would the Reporter read back the application, please?

-Lynch v Lynch-

(Record read)

THE COURT: o you understand the application that's been made?

MR. LYNCH: Your Honor, what I understood is what we have in the stipulation, that the judgement of divorce will not be entered until the confirmation that we've agreed to. If the incorporation of that --

THE COURT: Just go a little slower.

MR. LYNCH: If the incorporation that we're entering, the divorce, enters that language, which is the second paragraph of the stipulation, the judgement of divorce will not be entered until confirmation of the stipulation of settlement, which is follows:

So as-far as the issue that your Honor -- we discussed in chambers, the issue of fault, that issue has been resolved as to the divorce going forward but the issues that. need to be confirmed are the application of the settlement is my understanding of the facts. And as to the second issue, as to the release of the visitation bond, I have no objection.

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

THE COURT: Based upon your understanding is there any opposition to the application?

MR. LYNCH: There is --

THE COURT: Both parts of the application.

MR. LYNCH:' The part of the application that the judgment will not be entered itself?

THE COURT: Right.

MR. LYNCH: Until confirmation is completed?

THE COURT: That is the understanding of the Court.

MR. LYNCH: And that, I confirm, is what my understanding is as well.

THE COURT:-- You have no opposition?

MR. LYNCH: I have no opposition- to that.

THE COURT: And you have no opposition to the bond being released?

MR. LYNCH: No, your Honor.

THE COURT: Or vacated?

MR. LYNCH: No, your Honor.

THE COURT: Is there anything further?

-Lynch v Lynch-

MR. KEMPER: No, Judge.

THE COURT: I just want to mention --

MR. KEMPER: I would like your Honor, on the record, to grant the application for the divorce so we've got that done.

THE COURT: The application is granted.

I just wanted to mention, Mr. Lynch, that you have spent a great deal of time before this Court in chambers with. counsel, alone and you are an attorney who practices in the State of New Jersey, you're not being presently represented by counsel, I did recommend to you this morning that you seek. to consult with an attorney acquaintance of yours -- who is that, please?

MR. LYNCH: I had spoken with a. Mr. Ciganek; I didn't get ahold of him.

THE COURT: You attempted to call up Mr. Ciganek this morning.

I also recommended to you that you -- I certainly recommended to you this morning that you get an attorney to represent you, that you should not represent yourself in this matter; is that correct?

Appendix 2
Transcript of Proceedings on January 11, 1996

-Lynch v Lynch-

MR, LYNCH: That's -- absolutely,

THE COURT: And you've chosen to speak to someone on the telephone --.

MR. LYNCH: Yes, your Honor.

THE COURT: -- you attempted to reach another attorney but you did decide of your own volition to proceed unrepresented this morning by another attorney; is that correct?

MR. LYNCH: Yes, your Honor. If your Honor would like me to state what my understanding is and have Mr. Kemper confirm it, I'd.be happy to.

THE COURT: I don't think that's necessary. I don't think it's necessary.

All right. That will conclude the proceedings –today.

The court reporter shall prepare a transcript of the stipulation; the costs shall be borne equally by the parties. The Court shall be provided with a copy of same and a copy shall be provided for Mr. McGlinn, who is acting as guardian ad litem and the case will be adjourned for 30 days for calendar purposes only so that Mr. McGlinn can commence and

-Lynch v Lynch-

complete his investigation and file his report with the Court. If the report is filed prior to 30 days the Court will bring the matter in for a conference as well as a statement by the guardian ad litem. If for some reason' there's some delay, then Mr. McGlinn will advise the Court as to the circumstances of the delay and the Court will determine whether or not the matter should come in within the thirty-day period or not.

Off the record.

(After an off-the-record discussion the proceedings were adjourned)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE WITHIN PROCEEDINGS.

_____

ELLEN L. GUARDIANO, C.S.R., R.P.R.

Dated: January 12, 1996

Appendix 3
McGlinn Affirmations
[Pages 28a – 35a]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ROCKLAND

----------x

DEBRA LYNCH,

Plaintiff,

-against-

AFFIRMATION IN RESPONSE TO CROSS MOTION

Index No. 1109/95

DEAN LYNCH,

Defendant.

----------x

Joseph P. McGlinn attorney duly admitted to practice law in.the State of New York hereby affirms that the following statements are true under the penalty of perjury.

I am the Guardian ad Litem for Madeline Lynch in the above captioned action and make this affirmation in response (not necessarily in opposition) to the cross motion submitted by affidavit of William Frank, Esq. To paraphase my last resort as Guardian ad Litem I do not oppose the procedure of establishing a trust fund for my ward in exchange for a renunciation of her interest in the various trusts—I do not recommend that the trust be established in the sum of $1 million. It is my opinion that the one-fifth interest in the trust now owned by Madeline Lynch has a value far in excess of $1 million. The simple problem today is the mechanics of establishing the value of Madeline Lynch's interest and the procedure for payment of the expenses in connection with the valuation.

If the opinion of the court on these various motions is that the actions have abated then no further steps will be taken in connection with the trusts and Madeline Lynch will continue to have a 20% interest therein.

If it is the opinion of the court that the actions have not abated then the valuation of the trusts for-the purposes of authorizing a renunciation of the remainder interest is still at issue. At the present time it is my recommendation that the proposed figure of $1 million for the establishment of the settlement trust not be approved.

If the Court is in agreement with my recommendation in *not* approving the $1 million for the establishment of the settlement trust, then a procedure will have to be established for the valuation of the various trusts for the purpose of placing a settlement figure that hopefully will be acceptable to the undersigned as well as the court.

Appendix 3
McGlinn Affirmations

Independent auditors/accountants will be required to review the books and records of the various properties of each trust in order to determine their value. This will more than likely require the appraiser to inspect the books and records and the various properties themselves in New England, all at a considerable expense.

Interestingly, of all the papers submitted on the recent motions, none of the motions contain any suggestion as to the source of the funds to cover the expenses in placing value on the various trusts.

In the last two and one half years your deponent has spent more than 100 hours in this litigation and has expended the sum of $1,300 for one accountant's opinion, which formed the basis of my recommendation to disprove the $1 million settlement trust.

If negotiations are to continue on behalf of Madeline Lynch with the Franchi family members (the other remainderpersons of the trusts), then a method has to be determined as to the source of the funds to pay the expenses of an appraiser. It is my suggestion that the trusts themselves be the source of these funds.

Assuming an appraiser determines that figure in excess of $1 million is an inappropriate sum for Madeline Lynch to renounce her remainder interest, there is no assurance that this sum will be acceptable to the "plaintiff" or the plaintiff's estate--assuming there is one. This brings up the next question as to who is the spokesperson for the deceased plaintiff and who is (are) the true party (parties) in interest in the litigation. Clearly William Frank does not represent Debra Lynch -- she is deceased. At the present time, upon information and belief, no fiduciary has been appointed for Debra Lynch and there has been no indication as to the value of the estate of Debra Lynch.

Any resolution of this litigation by way of the establishment of a settlement trust for Madeline Lynch will

inure to the benefit of the other remainderpersons of the Franchi Family Trusts. Each other remainderperson currently has a 20% interest in the trusts. Upon the filing of a renunciation on behalf of Madeline Lynch their interest will automatically increase from 20% to 25% each.

In reality what is proposed by way *of* settlement of the divorce action is a purchase of Madeline's interest in the trusts by or on behalf of the other remainderpersons.

If an acceptable figure can be agreed upon with the assistance of a thorough and complete analysis and appraisal of the trust assets it would be my recommendation that a settlement trust be created. In the meantime I oppose the entry of a judgment of divorce until:

(1) An appraiser/accountant/financial analyst be designated (preferably upon consent of all parties).

(2) That fees be advanced (presumably from the trusts themselves) to pay all fees and disbursements incurred by your deponent to date.

(3) That funds be set aside and segregated for the payment of professional fees in connection with the appraisal.

(4) If your deponent and representatives of the plaintiff can agree on a settlement trust figure, that the settlement figure be delivered in escrow to William Frank, Esq.

I point out that in the event the action has abated, Madeline Lynch continues with her 20% interest in the trust and/ or in the event the parties cannot agree on a trust

settlement figure, Madeline Lynch would continue to be a 20% owner of the various trusts. Her interest in the trusts could be enforced by the appointment of a guardian of her property in the State of Massachusetts—presumably her father, Dean Lynch.

s/_____
Joseph P. McGlinn

Sworn to before me this
16th day of June 1998
Dated: June 16, 1998

s/_____
Patricia K. Meehan
Notary Public, State of New York
No. 01ME5063427
Qualified in Rockland County
Commission Expires July 22, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

PATRICIA FLAHERTY, LINDA A. KACEWICZ, and MICHAEL P. FRANCHI, as Executors of the Estate of DEBRA LYNCH,

Index No. 1109/95

Plaintiffs,

-against-

DEAN LYNCH,

Defendant,

AFFIDAVIT OF GUARD AD LITEM IN OPPOSITION TO RELIEF REQUESTED IN ORDER TO SHOW CAUSE

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

Joseph P. McGlinn, being duly sworn deposes and says;

I am the Guardian ad Litem for Madeline Lynch in the above captioned matrimonial action. This affidavit is made in response to the relief requested in the Order to Show Cause to the relief requested in the Order to Show Cause signed by Hon. William E. Sherwood, JSC and dated August 1, 2000. In my capacity as Guardian ad Litem for Madeline Lynch I oppose the relief requested in the Order to Show Cause.

The court rendered a decision/order dated, July 17, 2000 granting the plaintiff's motion for the entry of a judgment of divorce nunc pro tunc upon the condition that the

trust for the benefit of Madeline Lynch has been established and funded. I am in agreement with that decision.

Whether or not the defendant agreed or did not agree "with plaintiff's request" is not the issue. The issue is whether or not the plaintiff is entitled to a judgment of divorce nunc pro tunc.

The so called "modifications to the stipulation" are all for the benefit of Madeline Lynch and are otherwise simply necessary draftsmanship issues to have the trust established. Obviously 100% of the terms of the trust were not dictated when the action was settled on January 11, 1996. The proposed trust has undergone various language revisions over the past several years.

To clarify the record, Paragraph 4 of defendants affidavit submitted in support of the order to show cause incorrectly quotes me. The substance of my conversation with Mr. Lynch on July 20,2000 was that. if he believed the court to be in error that he first attempt to proceed by letter and not by order to show cause.

Clearly the defendant consented to the entry of a judgment of divorce in open court on January 11,1996 (see settlement stipulation).

Since my ward is not renouncing any interest in the various Franchi family trusts there is no reason, at this stage, to ascertain values.

Whatever interests Madeline Lynch has in the trusts, she continues to retain. Whatever interest she may have in her mother's estate she continues to retain.

WHEREFORE, it is respectfully requested that the relief requested in the order to show cause dated August 1, 2000 be denied.

s/_____
Joseph P. McGlinn

Sworn to before me this
1st day of August, 2000

s/_____
Patricia K. Meehan
Notary Public, State of New York
No. 01ME5063427
Qualified in Rockland County
Commission Expires July 22, 2001

Appendix 3
Report of Orville H. Mann, Jr.
[Pages 36a – 40]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

----------x

PATRICIA FLAHERTY, LINDA A. KACEWICZ and MICHAEL P. FRANCHI as Executors of the Estate of DEBRA LYNCH,

Plaintiff,

-against-

PRELIMINARY REPORT OF SUCCESSOR GUARDIAN AD LITEM

Index No. 1109/95

DEAN LYNCH,

Defendant, pro se.

----------x

I was appointed Successor Guardian ad litem in the above entitled divorce action to represent the interests of Madeline Lynch pursuant to Order of this Court dated August 16, 2000.

A Motion for an Order directing entry of a Judgment of Divorce

in the above action was brought on by the Plaintiffs by Notice of Motion dated January 13th, 2000. By virtue of this Court's Order dated August 22nd, 2000 vacating an earlier Order of the Court dated July 17th, 2000, the Plaintiffs' Motion is still pending and is returnable September 22nd, 2000.

Since my appointment as Successor Guardian I have reviewed a tremendous number of documents pertaining to this case. It has been a daunting task to assimilate all of the facts and issues set out in the pleadings, motions, affidavits, reports and other documents filed in this case and as of this

date I am not completely satisfied that I have all the information I need to properly represent the interests of my ward. I have not yet reviewed, for example, the Federal Estate Tax Return filed in the Estate of Debra Lynch, (although the contents of the return were summarized for me over the phone), copies of the family Trusts in which Madeline became a discretionary beneficiary on her mother's death and the records and conclusions of the accountant retained by Joseph McGlinn, Esq. I also have not yet taken into my possession and reviewed Mr. McGlinn's files, notes and memoranda on this case. There may be some thoughts and insights set down by Mr. McGlinn in those records which would be helpful to me. I do feel, however, that I have assimilated enough of the facts of the ease to represent the interests of my ward in connection with the pending motion. In this connection, I would like to thank Dean Lynch, Esq. and Wiliam Frank, Esq. for their help in familiarizing me with the facts in this case and providing me with copies of some of the documents pertaining to the case. I would also like to thank Robert Berliner, Esq. for assembling all the files for me and providing a quiet space at the Courthouse for me to review those files.

It is my position that the Plaintiff's motion for entry of a Judgement of Divorce should be granted. But for the unilateral modification of the Stipulation of Settlement waiving the requirement that the infant renounce her interest in various family Trusts, it seems clear from the cases cited by Plaintiffs that Debra Lynch is entitled to a Judgment of Divorce. The transcript of the Stipulation of Settlement at page 21. shows that the application for the divorce was granted wit the consent of Mr. And Mrs. Lynch subject to approval by the then Guardian ad litem. Although the then Guardian ad litem initially disapproved of the settlement, after the Plaintiffs waived the requirement that the infant renounce her interest in the family Trusts, the Guardian

changed his position and submitted an Affidavit to the Court sworn to August 1st, 2000 supporting the granting of the Plaintiff's Motion for entry of a Judgment of Divorce nunc pro tunc. Mr. McGlinn makes the point in his Affidavit that the modification to the Stipulation was for the benefit of Madeline Lynch. Not only is that true, but it also appears to me that the waiver by the Plaintiffs clearly benefits Dean Lynch, Esq. or at least does not harm or prejudice him. Mr. Lynch currently has the sole legal obligation for his daughter's support. Waiver of the renunciation improves his daughter's financial position, thereby indirectly benefiting Mr. Lynch.

Mr. Frank in his Affirmation dated August 10th, 2000 summarizes the arguments as to why the modification should not defeat the plaintiff's right to entry of a Judgment of Divorce and the arguments seem persuasive to me. To argue that a modification in the Stipulation that not only does not harm the Defendant, but actually benefits him, should be the basis for denying the Plaintiff the divorce which both parties had previously stipulated to and had been granted by the Court, elevates form over substance.

Assuming this Court grants the Plaintiffs' Motion, there are difficult issues remaining which need to be resolved pertaining to the funding of the Million ($1,000,000.00) Dollar settlement. I disagree with Mr. Frank that the source of the funds comprising the Million ($1,000,000.00) Dollar Trust are irrelevant. Mr. McGlinn makes the point in his Affidavit of January 19th, 2000 that he opposes the procedure for the establishment of the Trust because it was not clear to him where the money would come from to fund Trust. The fact that the source of the funds used to fund the Trust is relevant as far as the infant is concerned can be demonstrated by the following examples:

Appendix 3
Report of Orville H. Mann, Jr.

1. Assume that the Estate of the deceases was Seven Hundred and Fifty Thousand ($750,000.00) Dollars at the time of her death on September 5th, 1996. Assume further that in the past four years, the Estate has earned income which, after paying income taxes, has been reinvested and further that the assets of the Estate have appreciated so that the total value of the Estate at the present time is One Million ($1,000,000.00) Dollars. If Madeline's Trust is to be funded only with the One Million ($1,000,000.00) Dollars from the Estate, Madeline benefits only to the extent of Seven Hundred and Fifty Thousand ($750,00.00) Dollars or to put it another way, Madeline is funding the Trust with Two Hundred and Fifty Thousand ($250,000.00) Dollars of her own money.

2. Assume for the moment that the money or part of the money to fund the Trust comes from family Trusts of which Madeline is a potential discretionary beneficiary. If the Trustees of those Trusts contribute funds to make up the One Million ($1,000,000.00) Dollars for Madeline, they might be disinclined to consider Madeline for further discretionary distributions from the Trusts. Again, Madeline is in effect funding her own Trust to the extent that she loses out on possible future discretionary distributions from the Trusts.

Appendix 3
Report of Orville H. Mann, Jr.

Although I agree with the establishment of the Trust for my ward as part of the settlement, I would like to understand where the money is coming from which will be used to fund the Trust or, alternately, where the money is not coming from, and whether the source of the funding of the Trust is in the best interests of my ward.

Dated: September 15, 2000

Respectfully submitted

s/_____
Orville H. Mann, Jr., Successor Guardian ad litem

Appendix 4
Chronology of Key Events/Documents
[Pages 41a – 44a]

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
CHRONOLOGY OF KEY EVENTS/DOCUMENTS

9/5/96	Debra Lynch died, domiciliary of Massachusetts
7/22/97	Last Will and Testament dated June 28, 1995 filed in Middlesex County Probate and Family Court
10/20/98	Massachusetts counsel goes to above Probate Court to commence Probate proceedings, for appointment of Temporary Executors - court clerk assigns date of appearance for appointment of Temporary executors: November 24, 1998
10/20/98	Patricia Flaherty executes affidavit as petitioner for appointment as Temporary executrix
11/4/98	Executors serve all interested parties (including Dean Lynch) with Notice of Motion for appointment of Temporary executors
11/6/98	Dean Lynch files Petition for Letters of Administration in Rockland County Surrogates Court. - alleges that the decedent's 2 prior wills of Dec. 1993 and June 1995 are invalid.
11/16/98	Dean Lynch writes to Clerk of Massachusetts Probate Court. Acknowledges commencement of Probate proceedings therein, and requests

Appendix 4
Chronology of Key Events/Documents

	Court to recognize its lack of jurisdiction, set the matter down for a full hearing.
11/19/98	Petition (NEW YORK) dismissed for failure to annex wills.
11/23/98	Dean Lynch files Amended Petition for Letters of Administration, annexing copy of above 2 wills, and swearing to existence of no other wills after conducting due, diligent search.
11/24/98	Temporary Executors appointed in Massachusetts Probate Court
11/25/98	Original certificate of appointment of temporary executors by Massachusetts Probate Court filed' with Rockland County Surrogate
1/21/99	Dean Lynch files Notice of Special Appearance and Affidavit of Objections to Petition in Massachusetts Probate Court
02/22/99	Motion to extend appointment of tem executors granted by Massachusetts Probate Court
3/1/99	Copy of extension of appointment as temporary executors in Massachusetts filed with Rockland County Surrogate
3/8/99	Motion to extend appointment of temporary executors granted by Massachusetts Probate Court

Appendix 4
Chronology of Key Events/Documents

3/23/99	Copy of extension of appointment as temporary executors in Massachusetts filed with Rockland County Surrogate
3/29/99	Dean Lynch files Second Amended Petition for Letters of Administration
4/8/99	Temporary Executors of Estate of Debra Lynch move in Rockland County Surrogates Court to intervene and to dismiss Amended Petition and Second Amended Petition for Letters of Administration
5/17/99	Motion to extend appointment of temporary executors filed with Massachusetts Probate Court; service of same on Dean Lynch
6/3/99	Letter by Massachusetts counsel to Dean Lynch advising him that the Massachusetts Probate Court has ordered a pretrial conference for June 15, 1999 and that Court will be sending notice to all parties
6/3/99	PreTrial Notice & Order issued by Massachusetts Probate Court and sent to Dean Lynch. - Notice & Order stated that the case might be ordered to immediate trial on the date of the Pre-Trial.
6/10/99	Dean Lynch writes to Massachusetts Probate Court. stating: "I am in receipt of the Pre-Trial Notice & Order dated June 3, 1999 as to the above captioned matter." In said letter, Mr. Lynch advises Court that it has no jurisdiction over him or his daughter, and that he had made

Appendix 4
Chronology of Key Events/Documents

a "special appearance" to contest jurisdiction. He state that he would not attend any such conference due to his "special appearance."

Asks Court to take no action until issues are litigated in New York.

6/14/99 Dean Lynch writes again to Massachusetts Probate Court (sent by Fax)- advises Trial Dept. that he will not be appearing on June 15, 1999; that the Rockland County Surrogates Court has not yet made a decision as to his Petition for Letters of Administration, and that based on principles of conflict of laws, the Estate process, having been commenced earlier in time in NEW YORK must be resolved first in NEW YORK. Requests that Court take no action until then, and advised that he means no disrespect by his failure to appear.

6/15/99 Massachusetts Probate Court. admits Will to Probate and grants appointment of Executors of the Estate

9/8/99 NEW YORK Proceeding for Letters of Administration dismissed for lack of jurisdiction as Will admitted to Probate and executors have been appointed.

Appendix 5
Dean Lynch Letter to Probate Court
[Pages 45a – 46a]

11-16-98

Clerk of the Court
Middlesex Probate and Family Court
208 Cambridge Street
East Cambridge, Massachusetts 02141

Re: Estate of Debra Lynch
Docket No. 97P3465

Dear Clerk:

I am the husband of Debra Lynch and father of Debra's daughter Madeline, who is 11 years old.

I understand from the enclosed copies of letters from Mr. McGlinn dated 11-9-98 and Mr. Frank dated 11-13-98 that my in-laws have retained the firm of Lourie & Cutler to probate an alleged "Will" of my wife. I have not been served with any papers as to any action in your Court either as surviving spouse or guardian of Madeline.

I also enclose copy of letter sent to you on 9-13-96 from David Howe, Esq. as to this matter which it appears you have chosen to disregard.

I can only assume that the false death certificate with the misrepresentations of Mrs. Flaherty dated 9-9-96 was used to file in your Court. Not only was Debra not "divorced" but she was not a resident of "Weston, Middlesex. Mass." Your Court has no jurisdiction over this matter and any acts are and will be ultra virus.

I enclose for your review copy of my Petition for Letters of Administration which has been filed in Rockland County,

Appendix 5
Dean Lynch Letter to Probate Court

New York. In order to give you a clear picture of the facts and circumstances of the situation I also enclose copies of letters to the Appellate Division-Second Judicial Department, and Surrogate where jurisdiction is properly placed. In addition, I enclose the "Statement of Facts" from the Appellate Brief to give you a point of reference as to the facts in time starting in 1981.

It is respectfully requested that your Honorable Court recognize it's lack of jurisdiction, or in the alternative set the matter down for a full hearing as to the issue of jurisdiction including the factual findings as to competency and residency.

I would point up that in light of the fact I have not been served that any action by your Honorable Court is in violation of the due process clause of the United States Constitution.

Please act accordingly.

Respectfully submitted,

Dean Lynch
Husband of Debra Lynch, pro se

cc wo/enc.; Appellate Division-Second Judicial Department
Hon. Alfred J. Weiner
Lourie & Cutler
William Frank, Esq.
Shays, Kemper
Joseph McGlinn, Esq.

Appendix 6
Decision and Decree of Massachusetts Probate Court
[Pages 47a – 48a]

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION DOCKET NO. 97P3465

IN RE: ESTATE OF DEBRA LYNCH

MEMORANDUM OF DECISION

Respondent, Dean Lynch, the objecting party having failed to appear for pre trial on June 15, 1999; and

Respondent having sent a letter to the Trial Department of this Court dated June 10, 1999 in which he, a lawyer by profession, raises the issue of the jurisdiction of this court when the issue, if any, whether or not the court has jurisdiction over Respondent; and

The pre trial notice having specifically stated that the case may be ordered to immediate trial on the date of pre trial if it appears to the court that one party, through a failure to appear at the Pre Trial Conference or otherwise will not present a case;

the respondent not having raised the conventional objections, viz the issue of domicile or invalidity of the will due to undue influence, lack of capacity or improper execution, the court finds that he will not present a case and thus orders that the Will be allowed and the executors be appointed.

6/15/1999
Date

s/_____
Beverly Weinger Boorstein
Judge of Probate and Family Court

Appendix 6
Decree

Commonwealth of Massachusetts
The Trial Court
MIDDLESEX Division — Probate and Family Court Department — Docket No. 99P3465

Probate of Will With/Without Sureties

Name of Decedent Debra Lynch a/k/a Debra L. Lynch

Domicile at Death 16 Westcliff Road, Weston, Middlesex, MA 02493
(Street and No.) (City or Town) (County) (Zip)

Date of Death September 5, 1996

Name and address of Petitioner(s) Patricia Flaherty 111 Rockland Street, Natick, MA 01760; Linda A. Kacewicz 225 Narragansett Bay Avenue, Warwick, RI 02889; Michael P. Franchi 24 Perkins Street #C-2, Jamaica Plain, MA 02130 Status Siblings/Named Executors
Named Temporary Executors

Heirs at law or next of kin of deceased including surviving spouse:

Name	Residence (minors and incompetents must be so designated)	Relationship
Madeline S. Lynch	101 Greenbush Road, Tappan, NY 10983	Daughter (minor)

That said deceased left a will — ~~and codicil(s)~~ — herewith presented, wherein your petitioner(s) is/are named ~~executor~~ temporary and permanent Executors and wherein the testat rix had requested that your petitioner(s) be exempt from giving surety on his/her/their bond(s).

[X] The petitioner(s) hereby certify that a copy of this document, along with a copy of the decedent's death certificate has been sent by certified mail to the [redacted], P.O. Box 86, Essex Station, Boston, Massachusetts 02112.
Division of Medical Assistance,

Wherefore your petitioner(s) prayed that said will — ~~and codicil(s)~~ — may be proved and allowed, and that he/she/they be appointed executor/trix thereof, ~~and~~ without surety on his/her/their bond(s) and certify under the temporary and permanent penalties of perjury that the statements herein contained are true to the best of his/her/their knowledge and belief.

Date 10/20/98

Signature(s) Patricia Flaherty
Linda Kacewicz
[redacted]

The undersigned hereby assent to the foregoing petition and to the allowance of the will without testimony.

DECREE

All persons interested having been notified in accordance with the law or having assented and no objections being made thereto, it is decreed that said instrument(s) be approved and allowed as the last will and testament of said deceased, and that said petitioner(s): Patricia Flaherty of Attleboro in the County of Bristol, Linda A. Kacewicz of Warwick in the State of Rhode Island and Michael P. Franchi of Jamaica Plain in the County of Suffolk be appointed executor thereof, first giving bond with sureties for the due performance of said trust, together with the memorandum of Decision attached hereto, if any.

Date June 15, 1999

Beverly W. Wright Doucher
JUSTICE OF THE PROBATE AND FAMILY COURT

CJP2 (8/97)

JUN 29 1999

DATED

I, the undersigned HEREBY CERTIFY that I am the Register of the Probate and Family Court in the County of Middlesex, that such as I have Custody of the records of said Court, and I further Certify that the foregoing is a photographic copy of the decree of appointment of the fiduciary; that said fiduciary has given bond as required by the law and that said appointment remains in full force

Witness, by my hand and seal of the Probate Court of the Commonwealth of Massachusetts, in Cambridge.

Marie A. Gardin

MARIE A. GARDIN ACTING REGISTER
OF MIDDLESEX PROBATE COURT

Appendix 7
Renehan Affidavit
[Pages 49a – 50a]

IN THE
SUPREME COURT OF THE UNITED STATES

ADMINISTRATION PROCEEDING ESTATE OF DEBRA LYNCH a/k/a Debra L. Lynch & Debra Franchi, Deceased	)	No.
Dean Lynch Petitioner	)	
Patricia Flaherty, Linda A. Kacewicz, and Michael P. Franchi, Respondents	)	

AFFIDAVIT OF RICHARD W. RENEHAN

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts, and a shareholder in the Boston law firm of Hill & Barlow, located at One International Place, Boston, MA 02110.

2. I am also a member of the Bar of the United States District Court for the District of Massachusetts, for the Court of Appeals for the First Circuit, and of the Supreme Court of the United States (admitted as of 1971).

3. This affidavit is submitted in response to the untrue allegations made at pages six and seven of the Petition for Writ of Certiorari filed by Petitioner Dean Lynch, an attorney who is proceeding pro se. In that affidavit Mr. Lynch inaccurately states that I made a "misrepresentation...that Petitioner was the 'ex-husband' and that Decedent had been living in Massachusetts for 'two years

Appendix 7
Renehan Affidavit

after the divorce'"; and he also inaccurately states that I admitted to the Court that these statements were untrue.

4. First, my statement to the Court that Petitioner was the ex-husband of the Decedent was accurate as of the date made because as of that date the Surrogate Court in New York (in open court) had issued a decree of divorce based on the parties' Agreement for Divorce. The divorce decree was not entered due to the death of the Decedent.

Second, the Decedent had been living in Massachusetts for one year, eight months and a week, or approximately two years prior to her death on September 5, 1996.

I never stated to the Court that my statements were untrue.

Signed under the pains and penalties of perjury this 14th day of January, 2002.

s/_____
Richard W. Renehan

(3)

Supreme Court U.S.
FILED
FEB 25 2002
OFFICE OF THE CLERK

No. 01-1038

In the
Supreme Court of the United States

ADMINISTRATION PROCEEDING
ESTATE OF DEBRA LYNCH
a/k/a Debra L. Lynch & Debra Franchi, Deceased

Dean Lynch,
Petitioner

Patricia Flaherty, Linda A. Kacewicz,
and Michael P. Franchi,
Respondents

On Petition for Writ of Certiorari
To The New York Court of Appeals

REPLY TO BRIEF IN OPPOSITION

Dean Lynch, pro se
Petitioner
101 Greenbush Road
Tappan, NY 10983
845-359-7161

14pp

INTRODUCTORY STATEMENT

Petitioner has read and reviewed Respondents' Brief in Opposition to Petition for Writ of Certiorari. With all due respect, Respondents' counsel, appears to have filed a Cross-Petition. Respondents Brief fails to address the "Questions Presented for Review" by Petitioner and includes its own "Questions Presented". Respondents' points and arguments that follow do not address either Petitioner's or their own questions directly. The Rules of this Honorable Court which allow the filing of "a reply brief addressed to new points raised in the brief in opposition" present a difficult circumstance when applied to Respondents' Brief. The Questions, Points and Argument exemplify the Petition's assertion that "procedures are misused to hide the truth." (page 27)
Respondents have attempted to weave a web of confusion to divert attention from the important constitutional "Questions Presented for Review" in the Petition.

Reproduce from Petition

QUESTIONS PRESENTED FOR REVIEW

I. Before full faith and credit is granted to a judgment in the courts of other states does constitutional due process require an inquiry into jurisdiction?

II. Does constitutional due process of law include known fraud being entitled to full faith and credit?

III. Does constitutional due process allow the dismissal of an action based upon evidence not properly before the tribunal and not subject to confrontation?

IV. Without jurisdiction, does notice satisfy the constitutional due process requirement for a full and fair opportunity to be heard?

V. Does equal protection under the law require a court to protect the interests of an unrepresented infant?

VI. Does the denial of appellate review without opinion evidence an arbitrary and capricious denial of due process?

VII. How can equal protection and due process under the law be insured in the 21st Century?

TABLE OF CONTENTS

PAGE

INTRODUCTORY STATEMENT i

QUESTIONS PRESENTED FOR REVIEW ii

TABLE OF CONTENTS iii

RESPONDENTS' "QUESTIONS PRESENTED"

I. 1
II. 2
III. 2
IV. 3
V. 4
VI. 4
VII. 5
VIII. 6

OBSERVATIONS
AS TO RESPONDENTS' ARGUMENT 7

CONCLUSION 10

Respondents' "Questions Presented"

I. Is a constitutional issue which is not raised in the trial court preserved for review in the United States Supreme Court?

The Petition for Writ of Certiorari (hereafter Petition) sets forth at length the Petitioner's position at Reasons for Granting the Writ III (page 15). There was no opportunity to preserve the constitutional issue at the trial court. Under the facts of this case there was no constitutional issue before the New York trial court. When the matter was submitted in April 1999, there no Massachusetts decree of June 15, 1999 existed. The constitutional issues arose when the New York trial court (Surrogate Weiner) acted without notice to Petitioner's attorney and relied upon the Massachusetts decree. Said decree was not properly before the New York court and Petitioner's attorney was never given the opportunity to address that decree or any of the issues flowing therefrom. It is this clear departure from the "accepted and usual course of judicial proceedings" which the New York Appellate Court and Court of Appeals have sanctioned and requires "an exercise of this Court's supervisory power".

II. Is a final judgment of a state entitled to Full Faith and Credit in the courts of another state?

As illustrated by the cases in the Petition, there are constitutionally mandated conditions of due process which must be adhered to prior to any judgment being afforded Full Faith and Credit. The most important of these conditions is jurisdiction. In the case at bar, it is not disputed that jurisdiction in an estate matter is controlled by "where decedent was domiciled when she died." Petitioner asserts that prior to the sister state extending full faith and credit there must be a finding that the state where the judgment was entered had subject matter jurisdiction.

III. Where a potential beneficiary receives notice of a state court proceeding and contacts that state court but then intentionally fails to appear in that proceeding, does the Full faith and Credit clause preclude collateral attack of that court's decree in another state?

The Petition as supported by the case law therein answers "NO". It is undisputed that Petitioner intentionally failed to appear. Clearly as set forth in the Petition (pages 16-19), if Petitioner had appeared he would have lost his right to collateral attack the issue of jurisdiction. It appears to be Respondents' position that Petitioner had no right to rely upon the rule of law to protect his daughter and himself from the Catch-22 situation of June 15, 1999.

IV. Where collateral attack on a judgment is not available in the state rendering the judgment, can the judgment be collaterally attacked in another state?

With all due respect, the Petitioner has no idea what Respondents are asking, or how it relates to the issues before this Honorable Court. The case at bar concerns the Trial Court of the State of New York which had found that the divorce action abated at death of plaintiff, but still could afforded Full Faith and Credit to a Massachusetts default decree which:

a) was not properly before it;
b) never allowed to be addressed by Petitioner's attorney;
c) acknowledged it lacked personal jurisdiction;
d) did not address subject matter jurisdiction
e) knew form personal knowledge obtained during the divorce hearing concerning decedent's terminal illness; and
f) was based upon and included the representation that the decedent was divorced.

The Appellate Court and Court of Appeals of New York were made aware that in Massachusetts (See Petition Appendix F) a hearing had been requested as to subject jurisdiction in light of the issues of domicile and competency, but the Massachusetts court disregarded that request and entered the default decree. It is an undisputed fact that no court has examined the facts as to jurisdiction/domicile. The attack upon jurisdiction is not collateral, but direct because without jurisdiction the foreign judgment is a nullity, and need not even be addressed under the Full faith and Credit.

V. Even if the federal constitution mandated to provide Full Faith and Credit does not require the courts of one state to enforce the judgment of another state, may a state provide a greater degree of Full Faith and Credit than is mandated by the constitution? Alternatively, may the second state enforce the judgment as a matter of comity or under its own local law?

It appears that Respondents are asserting that the Full Faith and Credit clause benefits the states in the administration of justice, and that consideration is paramount and the states in applying the mandate of Full faith and Credit can disregard the constitutional rights of an individual. In the second part of the question, Respondents assert that comity or local law, may enforce a comedy of constitutional rights. That is exactly what has transpired in the State of New York where known fraud is entitled to full faith and credit. The Petitioner had the reasonable expectation that his rights would be protected in his home state where he was recognized as the surviving spouse.

VI. Does due process preclude determining an issue solely on papers submitted to a court? Does due process require a court to hold a hearing or to issue a written opinion responding to every argument made by a party?

The answer is "Yes" when the papers submitted are:

(a) untimely and improperly submitted [ie. the Massachusetts default decree]
(b) include known misrepresentations of fact [ie. marital status]

(c) the interests of an infant are being negatively impacted [ie: courts were aware infant had received no account in the years –now 5 ½- as to her mother's estate and trusts]

(d) under the unique and unusual circumstances of this case.

The Petition asserts due process requires that a written determination of jurisdiction be included in every judicial proceeding prior to application for full faith and credit in a sister state.

VII. Is a claim to be the administrator of an estate a property right protected by due process?

A review of the Record below would reveal that this is not an issue in that Petitioner had stated by affidavit dated March 25, 1999 that he had no objection to the appointment of Joseph McGlinn, Esq., as Administrator of the Estate of Debra Lynch. Mr. McGlinn died on August 16, 2000. Petitioner would still request an independent person be appointed Administrator of the Estate. Petitioner is being denied his rights as the surviving spouse of Debra Lynch.

I. If the Petitioner could not possibly prevail, as a matter, of law, upon a remand of the case, should this Court grant certiorari?

The Reasons for Granting the Writ in the Petition sets forth why Petitioner feels he will prevail given a full and fair opportunity to be heard and why this matter should be addressed by this most Honorable of Courts. *
As reflected in the Petition (VI; VII & Conclusion) winning or losing should be secondary to the administration of justice. What should be paramount to this most Honorable of Courts is that there be equal justice under the law for all American.

---

*Respondents know that Petitioner "could not possibly prevail" for the same reasons it took Justice/Surrogate Weiner over 2 years after decedent's death to declare an abatement and April to September to not address subject matter jurisdiction, but only 13 days to dismiss Petition (NEW YORK) to allow the Massachusetts Petition filed November 24, 1998 to be first in time. See Respondents' Appendix 4 Amended New York Petition filed November 23, 1998 first in time & right.

AS TO RESPONDENTS ARGUMENT

The tone and tactics of Respondents' brief is the same as was presented in the state courts. The tactics are to slander the Petitioner saying that he is a gold digging ex-husband who has committed fraud on the court and wishes to steal from his own daughter, and is solely motivated by greed, and rewrite history. Petitioner's motivations are clearly set forth in Respondents' Appendix 2 and 5. The history is so tragic that Petitioner wishes it could be rewritten.

The tone is that Respondents know the law and the facts and no one should dare question their "misrepresentations" as to "both law and fact", particularly Petitioner, "an attorney, appearing *pro se*."

Respondents appear to rely on the fact that due to the volume of paper, no one will cross check the record or (at this level) the Appendix to discover their spinning of the facts. Respondents' Brief and Appendix contains many examples which illustrate this contention. Petitioner sets forth below a few to confirm Respondents' practice.

At page 7, Respondents assert that: "Petitioner's claim that Massachusetts had no jurisdiction is founded primarily on his false and irrelevant claim that Respondents' counsel misrepresented decedent's marital status to the Massachusetts court." To support this assertion Respondents have obtained an affidavit (without notary) from Richard W. Renehan, Esq. (pages 44a-45a) Said affidavit if read together with Petitioner's Appendix F clearly does not support

their assertion, but illustrates that Respondents are continuing to attempt to mislead this Honorable Court and rewrite the facts. On June 15, 1999, Richard W. Renehan, Esq. knew or should have known that the Order of the Supreme Court of New York (trial court) dated October 28, 1998 had abated the divorce action. Moreover as set forth in Respondents' Appendix 2, there never was a decree or judgment of divorce issued and/ or entered on January 11, 1996.
"The judgment of divorce to be entered herein will not be entered until confirmation of the stipulation of settlement which is as follows:." (page 6a) Even giving Mr. Renehan the benefit of the doubt, how is September 5, 1996< the date of Debra Lynch's death, "two years after the divorce"?

At page 8, Respondents assert that "The nominated executors under the Will, Respondents herein, commenced probate proceedings in that court and duly served all interested persons—including Petitioner-by November 4, 1998."
A paragraph later Respondents refer to Petitioner's letter of November 16, 1998 to the Massachusetts Court, which they have reproduced as Appendix 5 (page 40a).
Petitioner's letter clearly states that: "I have not been served with any papers as to any action in your Court either as surviving spouse or guardian of Madeline."

Other misrepresentations, lies, characterizations and half-truths appear throughout Respondents' argument, which a review of the Record of Appeal (RA-page#) below or an application of common sense would disclose. Such as:

Page 11: "Petitioner has never offered any credible evidence to establish his incapacity claim" (RA-308 which is Petition Appendix I & RA-42 which is Petition Appendix K) and "his claims of undue influence and duress." See Affidavit of Joy Macy dated 1-8-99 (RA-128), Affidavit of Paula Litow dated 7-26-95 (RA-131)

Page 12: "Petitioner only reveals his lack of understanding of the law." Respondents are addressing the New York Amendment as to the rights of a surviving spouse. Respondents did not raise this argument in the New York Courts, Appellate or Court of Appeals, because those very Courts have not interpreted the language of the statute. Moreover, that factual issue of whether or not the vast assets of the Franchi Family Trusts, including Franchi Management Company, Inc., are subject to the New York jurisdiction is the exact reason this litigation has been so extensive, expensive and hardly fought. It is the "survivor's ability to break the trust" that "throws a wrench in some family business plans." This is the "substantial case" foreshadowed in the NY TIMES. See Petition Appendix J

Page18: Respondents mix apples and oranges. When addressing the requirement of a hearing they cite a case dealing with "questions of law" when clearly jurisdiction is a "question of fact".

There are so many other misstatements, misrepresentations and half truths that it would exhaust my time and space allowed for the Reply to Brief in Opposition to address each and every one. There can be no question there is a world of

difference in the facts presented and only a full hearing can separate the wheat from the chaff as to those factual issues. The Petition is not about facts, it is about the law and how the law is administrated in the State of New York in such a way to deny its citizens the equal protection of the law. There is no doubt Petitioner has been and is being denied his standing and rights as Debra Lynch's surviving spouse and the State of New York has sanctioned it.

CONCLUSION

It is respectfully requested that all the submissions be carefully read and reviewed, then you go home for the evening prior to deciding on the Petition. Upon your return the next day, please stop a few minutes on the steps and look up over the door of the Court. Then consider the Petition and determine its merit.

Respectfully submitted,

Dean Lynch, pro se
Petitioner
101 Greenbush Road
Tappan, NY 10983
845-359-7161